

*United States Court of Appeals
for the
District of Columbia Circuit*



**TRANSCRIPT OF
RECORD**

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

AIR LINE EMPLOYEES ASSOCIATION,
PETITIONER,

V.

CIVIL AERONAUTICS BOARD,
RESPONDENT,
AND
ALLEGHENY AIRLINES, INC.,
INTERVENOR

618

NO. 22,243

JOINT APPENDIX

United States Court of Appeals
for the District of Columbia Circuit

FILED FEB 11 1969

Nathan J. Paulson
CLERK

Air Line Employees Association v. C.A.B.
C.A.D.C. No. 22,243

INDEX

<u>Item</u>	<u>Description</u>	<u>Certified Record Page</u>	<u>Page</u>
1	Joint Application of Allegheny Airlines, Inc. and Lake Central Airlines, Inc. for Approval of Merger and Transfer of Certificate and Appendix A thereto	2-5 9, 11 19-22	JA-1 to 4 5 to 6 7 to 10
Petitions for Leave to Intervene by:			
5	Air Line Dispatchers Association	71-73	JA-11 to 13
6	International Brotherhood of Teamsters	76-77	JA-14 to 15
7	Air Line Pilots Association, International	80-83	JA-16 to 19
9	Air Line Employees Association, International	88-94	JA-20 to 26
11	International Association of Machinists and Aerospace Workers	99-100	JA-27 to 28
14	Report of Prehearing Conference held November 9, 1967	115-117 119-120 122 127-129	JA-29 to 31 32 to 33 34 35 to 37
15	Order E-26007, dated November 20, 1967, Granting Intervention	133	JA-38
	Order E-26129, dated December 15, 1967, Granting Intervention	135	JA-39
20	Direct Exhibits and Written Testimony of International Brotherhood of Teamsters	147-150	JA-40 to 43
21	Joint Exhibits		
	JE T(1)(rev.)	160-166	JA-44 to 50
	JE T-4	178-180	51 to 53
	JE-119	237	54
	JE-120	238	55
	JE-127	330-347	56 to 73
	JE-264 (rev.), p. 3	440	74
	JE-265 (rev.), p. 10	452	75
	JE-282	475	76

INDEX (Continued)

<u>Item</u>	<u>Description</u>	<u>Certified Record Page</u>	<u>Page</u>
22	Direct Exhibits and Written Testimony of Air Line Dispatchers Association	484-488	JA-77 to 81
23	Written Testimony of Air Line Employees Association, International	490-497	JA-82 to 89
24	Direct Exhibits and Testimony of The Air Line Pilots Association, International	500-520	JA-90 to 110
25	Response from International Association of Machinists and Aerospace Workers	522	JA-111
29	Transcript of Hearing pp. 17-26 pp. 215-216 pp. 435-436	572-581 771-772 993-994	JA-112 to 121 122 to 123 124 to 125
35	Brief of Air Line Employees Association, International	1101-1103 1108-1116	JA-126 to 128 129 to 137
48	Initial Decision of Examiner Milton H. Shapiro	1220-1289	JA-138 to 208
49	Petition for Review by Air Line Dispatchers Association	1290-1298	JA-209 to 217
50	Answer of Joint Applicants to Petition for Review	1300-1303	JA-218 to 221
51	Order No. E-26968 Declining Review	1307	JA-222
52	Initial Decision - Map of Combined Route System	1311	JA-223
53	Statement of Compliance	1378	JA-224
54	Notice from Civil Aeronautics Board certifying payment of License Fee	1379	JA-225
55	CAB Order 68-7-1	1382-1392	JA-226 to 236
56	Petition of Air Line Employees, International for Revocation	1400 1402-1404	JA-237 238 to 240
	Labor Protective Conditions - United-Capital Merger Case, 33 CAB 307, pp. 342-347		JA-241 to 247
	Labor Agreement between Lake Central Airlines and Air Line Employees Association, International		JA-248 to 271

JA-1

BEFORE THE
CIVIL AERONAUTICS BOARD
WASHINGTON, D.C.

Application of
ALLEGHENY AIRLINES, INC.

and

Docket _____

LAKE CENTRAL AIRLINES, INC.

under Sections 408 and 401 of the Federal
Aviation Act of 1958 for approval of the
merger of Lake Central Airlines, Inc.
into Allegheny Airlines, Inc., and for
transfer of Lake Central's Certificate
of Public Convenience and Necessity for
Route 88 to Allegheny.

JOINT APPLICATION OF
ALLEGHENY AIRLINES, INC.

and

LAKE CENTRAL AIRLINES, INC.
FOR APPROVAL OF MERGER AND
TRANSFER OF CERTIFICATE

Allegheny Airlines, Inc. (Allegheny) and Lake
Central Airlines, Inc. (Lake Central), pursuant to Sections
408 and 401 of the Federal Aviation Act of 1958, as amended
(Act), and such other provisions of the Act as may be found
applicable, hereby apply for approval of an agreement (a true
and conformed copy of which is attached as Appendix A and is
incorporated herein by reference) entered into between
Allegheny and Lake Central on October 18, 1967, pursuant to
which Lake Central will be merged into Allegheny, with Allegheny
being the surviving carrier under the name Allegheny Airlines,
Inc., and for approval of a transfer of Lake Central's Certificate
of Public Convenience and Necessity for Route 88 to Allegheny.

In support of this application, the parties state as follows:

1. Allegheny and Lake Central are corporations organized and existing under the laws of the State of Delaware. The principal offices of Allegheny are located at Washington National Airport, Washington, D.C., and the principal offices of Lake Central are located at Weir Cook Airport, Indianapolis, Indiana.

2. Allegheny and Lake Central are citizens of the United States within the meaning of Section 101 (3) of the Federal Aviation Act of 1958. The Officers and Directors of Allegheny and of Lake Central are citizens of the United States and over 75 percent of the voting interest of Allegheny and of Lake Central is owned and controlled by persons who are citizens of the United States.

3. Allegheny and Lake Central are air carriers of persons, property and mail in scheduled air transportation. Allegheny is the holder of Certificates of Public Convenience and Necessity issued to it by the Civil Aeronautics Board authorizing it to engage in such air transportation over Routes 97 and 97-F. Lake Central is the holder of a Certificate of Public Convenience and Necessity issued to it by the Civil Aeronautics Board authorizing it to engage in such air transportation over Route 88.

4. Allegheny and Lake Central, pursuant to resolutions duly adopted by a majority of their respective Board of Directors, have entered into an Agreement of Merger, dated October 18, 1967, providing for the merger, subject to the approval of the Civil Aeronautics Board, and any other persons whose approval shall be required, of Lake Central into Allegheny as the surviving Corporation, and for the certificate transfer, as is fully set forth in said Agreement.

5. The Agreement provides that consummation of the merger is contingent upon Board approval without any conditions which would adversely and materially affect the surviving Corporation, and upon the certificate of public convenience and necessity of Lake Central being transferred to Allegheny without any material adverse change in the nature or scope of the services authorized thereby.

6. The merger of Lake Central into Allegheny will be consistent with the public interest since it will strengthen both carriers, will result in improved service to the public, and will ultimately reduce the combined subsidy need of the two carriers.

7. The merger of Lake Central into Allegheny meets the conditions of Section 408 and all other pertinent Sections of the Act since the merger will not result in creating a monopoly or monopolies, will not restrain competition, and will not jeopardize any other air carrier not a party to the merger.

8. The merger of Lake Central into Allegheny will be in the best interests of both companies, their employees, and their respective stockholders.

WHEREFORE, Allegheny and Lake Central respectively request the Board:

1. To approve the attached Agreement of Merger entered into between Allegheny and Lake Central;
2. To approve the transfer to Allegheny of the Certificate of Public Convenience and Necessity issued to Lake Central for Route 88;
3. To act as expeditiously as possible on each of these requests; and

4. To grant such other and further relief
as it may deem proper.

Respectfully submitted,

Edwin I. Colodny

Edwin I. Colodny
Attorney for
Allegheny Airlines, Inc.

Albert F. Grisard

Albert F. Grisard
Attorney for
Lake Central Airlines, Inc.

October 20, 1967

CERTIFICATE OF SERVICE

I hereby certify that I have this day served copies of this application upon all trunkline and local service carriers serving any point served by Allegheny or Lake Central, or their counsel, the Chief Executives of all states served by Allegheny and by Lake Central, the Aviation Commission or Agency, if any, in the states served by Allegheny and by Lake Central, each labor organization representing employees of Allegheny and Lake Central, and the Postmaster General.

William P. Howard

W. L. Howard

October 20, 1967

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3

3.

and provisions herein contained, agree that Allegheny will merge into itself Lake Central, and that Lake Central be merged into Allegheny, pursuant to Section 251 of the General Corporation Law of the State of Delaware, and hereby agree upon and prescribe the terms and conditions of said merger and the mode of carrying the same into effect as follows:

ARTICLE I

Constituent Corporations

1.01 On the effective date of the merger, Allegheny and Lake Central shall be combined into a single corporation by merging Lake Central into Allegheny in accordance with Section 251 of the General Corporation Law of the State of Delaware.

ARTICLE II

Certificate of Incorporation

2.01 On the effective date of the merger, the certificate of incorporation of Allegheny as in effect on the date hereof shall be and remain the certificate of incorporation of the Surviving Corporation until amended in the manner provided by law and the certificate of incorporation.

5.

Robert LeBuhn	Morristown, New Jersey
Robert M. Love	Vineyard Haven, Massachusetts
Philip V. Mattes	Clarks Summit, Pennsylvania
Nelson S. Mead	Dayton, Ohio
Henry A. Satterwhite	Bradford, Pennsylvania
Walter J. Short	Arlington, Virginia
Robert B. Stewart	Lafayette, Indiana
Samuel R. Sutphin	Indianapolis, Indiana
Corcoran Thom, Jr.	Washington, D. C.
Jack A. Vickers	Denver, Colorado
Roy L. Whistler	Lafayette, Indiana
Perry R. Bass	Forth Worth, Texas

4.02 From and after the effective date of the merger, the Directors of the Surviving Corporation shall hold office, subject to the by-laws of the Surviving Corporation, until the next annual election following the merger, and until their successors are duly elected and qualified.

ARTICLE V

Employees of the Surviving Corporation

5.01 The Surviving Corporation will accept reasonable labor protective provisions of the character and extent previously prescribed by the Civil Aeronautics Board in similar situations, which provide, among other things, for allowances for certain employees who may be displaced or dismissed as the result of the merger.

13.

standing on the effective date of the merger to purchase shares of the Common Stock of Allegheny shall continue as an Option to purchase shares of Common Stock of the Surviving Corporation.

6.07 Each Common Stock Purchase Warrant of Allegheny issued and outstanding on the effective date of the merger entitling the holder thereof upon exercise of such Warrant to purchase shares of the Common Stock of Allegheny, shall continue as a Common Stock Purchase Warrant of the Surviving Corporation entitling the holder thereof, upon exercise of such Warrant, to purchase shares of the Common Stock of the Surviving Corporation.

ARTICLE VII

Employee Welfare Plans

7.01 All pension, retirement income, disability and health care plans for salaried or hourly paid employees of Lake Central in force on the effective date of the merger to the extent Lake Central may be bound thereby shall be assumed by the Surviving Corporation and continued for the benefit

of the present employees of Lake Central employed by the Surviving Corporation, which shall thereafter have all the rights and obligations of Lake Central thereunder, with service to Lake Central prior to the effective date of the merger counted as service to the Surviving Corporation, except that the Surviving Corporation may substitute benefits at least equal in value under any similar plan of the Surviving Corporation with respect to any employees covered by any of the plans of Lake Central.

7.02 All supplemental retirement income or death payment agreements, and all insurance policies owned by Lake Central in connection with such agreements, shall be assumed by the Surviving Corporation, which shall thereafter have all the rights and obligations of Lake Central thereunder, and all such insurance policies shall be transferred to the Surviving Corporation.

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21

JA-9

15.

ARTICLE VIII

Certain Effects of Merger

8.01 On the effective date of the merger, all the rights, privileges, powers and franchises, as well of a public as of a private nature, of each of the Constituent Corporations shall be possessed by the Surviving Corporation, subject to all the restrictions, disabilities and duties of each of the Constituent Corporations and all and singular the rights, privileges, powers and franchises of each of the Constituent Corporations, and all property, real, personal and mixed, and all debts due to any of the Constituent Corporations on whatever account, as well for stock subscriptions as all other things in action or belonging to each of the Constituent Corporations, shall be vested in the Surviving Corporation, and all property, rights, privileges, powers and franchises and all and every other interest shall be thereafter as effectually the property of the Surviving Corporation as they were of the several and respective Constituent Corporations, and the title to any real estate vested by deed or otherwise under the laws of the State of Delaware or otherwise in either of the Constituent Corporations shall not revert or be in any way impaired by reason of the merger herein provided for; but all rights of creditors and all liens upon any property of any of the Constituent Corporations shall be preserved unimpaired, and all debts, liabilities and duties of the respective Constituent

10/17/67

22

JA-10

16.

Corporations shall upon the effective date of the merger attach to the Surviving Corporation, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it.

8.02 If at any time any further assignments or assurances in law or any other things are necessary or desirable to vest or to perfect or confirm of record in the Surviving Corporation the title to any property or rights of either of the Constituent Corporations, or otherwise to carry out the provisions of this Agreement, the proper officers and directors of the respective Constituent Corporations as of the effective date of the merger shall execute and deliver any and all proper deeds, assignments and assurances in law, and do all things necessary or proper to vest, perfect or confirm title to such property or rights in the Surviving Corporation, and otherwise to carry out the provisions of this Agreement.

ARTICLE IX

Effectiveness of Merger

9.01 This Agreement shall be submitted separately to the stockholders of Lake Central and to the stockholders of Allegheny, the Surviving Corporation, in accordance with and in the manner provided in the General Corporation Law of the State of Delaware and in their respective certificates of incorporation,



JA-11

Air Line Dispatchers Association AFL-CIO

71

AFL-CIO.

DOCKET NO.

243 W. MAPLE AVENUE
VIENNA, VIRGINIA 22180

OCT 25 2 10 PM '67

CIVIL AIR LINES INC (703) 938-2160
SICKLES & GOLDBERG (703) 938-2161

October 24, 1967

DOCKET NO. 19151

Docket Section
Civil Aeronautics Board
Universal Building
Washington, D. C.

Gentlemen:

IN THE MATTER OF APPLICATION OF LAKE CENTRAL AIRLINES, INC. and ALLEGHENY AIRLINES, INC. (DOCKET NUMBER 19151) UNDER SECTION 403 OF THE FEDERAL AVIATION ACT OF 1958 AND PART 302 OF THE C.A.B. PROCEDURAL REGULATIONS AND OTHER SUCH SECTIONS THEREOF THAT ARE APPLICABLE FOR APPROVAL OF AGREEMENT OF MERGER.

PETITION TO INTERVENE

THE AIR LINE DISPATCHERS ASSOCIATION, AFL-CIO, BEGS LEAVE TO INTERVENE IN SUBJECT PROCEEDINGS AND REQUESTS THAT COMMUNICATIONS WITH RESPECT TO THIS PETITION BE SENT TO ROBERT E. COMERCE, PRESIDENT, AIR LINE DISPATCHERS ASSOCIATION, AFL-CIO, 243 WEST MAPLE AVENUE, VIENNA, VIRGINIA, 22180 AND TO JOSEPH A. SICKLES, ESQ., SICKLES AND GOLDBERG, 4720 MONTGOMERY LANE, BETHESDA, MARYLAND 20014.

Docket Section
Civil Aeronautics Board
Page 2

October 24, 1967

Now comes the petitioner, AIR LINE DISPATCHERS ASSOCIATION, AFL-CIO, and represents that it has adequate interest in the above entitled proceedings and moves that it be permitted to intervene. As grounds for so doing, claims:

1. ALDA is the bargaining representative for the Aircraft Dispatchers of Lake Central Airlines, Inc., as an unincorporated labor union within the definitions of the Railway Labor Act, with principal offices at 243 West Maple Avenue, Vienna, Virginia, 22180.

2. The air carriers involved in this merger are common carriers engaged in interstate commerce within the definitions of the Railway Labor Act, Title II, Section 201.

3. ALDA has a collective bargaining agreement with Lake Central Airlines, Inc. covering the class and craft of Aircraft Dispatchers.

4. If the aforementioned air carriers should merge, as is their announced intention, there will be approximately 13 employees who may be affected as follows:

(a) Loss of their positions due to reduction in force by furlough or dismissal.

Docket Section
Civil Aeronautics Board
Page 3

October 24, 1967

- (b) Demotion to a lower category with a commensurate reduction in pay.
- (c) Loss or diminution of seniority rights held by them pursuant to existing collective bargaining agreement.
- (d) Cost of moving to a new location as a result of the merger.
- (e) Loss in sale of property or cancellation of lease brought on by transfer.

WHEREFORE, your petitioner objects to the consummation of the proposed merger unless the Civil Aeronautics Board establishes labor protective provisions commensurate with the degree in which employees may be affected. Disruption and dismissal of employees has an unstabilizing effect on the economy of the locality and the nation and is not in the public interest.

FURTHER, the Association prays leave to intervene in this proceeding and to be treated as a party with the right to have notice of, and to participate in any further proceedings, to produce testimony and to interrogate witnesses and to present briefs and to rebut briefs of others.

Respectfully submitted,

AIR LINE DISPATCHERS ASSOCIATION

Robert E. Commerce

Robert E. Commerce
President

Arrig

RECEIVED
DOCKET NO. 19151

76

BEFORE THE
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Oct 27 3:41 PM '67

CIVIL AERONAUTICS
BOARD

Application of :
ALLEGHENY AIRLINES, INC. :
and :
LAKE CENTRAL AIRLINES, INC. :
under Sections 408 and 401 of the :
Federal Aviation Act of 1958 for :
approval of the merger of Lake :
Central Airlines, Inc. into :
Allegheny Airlines, Inc., and for :
transfer of Lake Central's Certi- :
ficate of Public Convenience and :
Necessity for Route 88 to :
Allegheny. :

Docket No. 19151

PETITION TO INTERVENE ON BEHALF OF INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSE-
MEN AND HELPERS OF AMERICA, AIRLINES DIVISION

Now comes International Brotherhood of Teamsters,
Chauffeurs, Warehousemen and Helpers of America, Airlines
Division, hereinafter referred to as Petitioner, and pursuant
to Rule 15 (C.F.R. Title 14, page 302, Sec. 302.15) hereby
petitions for leave to intervene in the above entitled pro-
ceedings. In support of such petition petitioner states as
follows:

1. International Brotherhood of Teamsters, Chauf-
feurs, Warehousemen and Helpers of America, Airlines Division,

is a labor organization which represents and has exclusive bargaining rights for mechanics and stock clerks, together with related classifications employed by Lake Central Airlines, Inc. In addition the said Petitioner, Airlines Division, has filed under Section 1, Ninth, of the Railway Labor Act an application asking the services of the National Mediation Board to investigate a dispute as to which labor organization shall be certified as the representative of the class or craft of clerical, office, fleet and passenger services employees employed by Allegheny Airlines, Inc.

2. The Petitioner has been informed that Allegheny Airlines, Inc. and Lake Central Airlines, Inc. have filed application with this Board for the transfer of Lake Central's Certificate of Public Convenience for Route 88 to Allegheny Airlines, Inc. In order to protect the interests and job rights of the above indicated employees of Lake Central Airlines, Inc., and of Allegheny Airlines, Inc., in such application for transfer, it is necessary that their duly selected bargaining representative, namely the Petitioner, be accorded opportunity to appear at the hearings. Intervention is sought solely for this limited purpose.

For the foregoing reasons, Petitioner respectfully requests an opportunity to intervene in the forthcoming proceedings, seeking such transfer of certificate.

Respectfully submitted,

Herbert S. Thatcher
HERBERT S. THATCHER
1009 Tower Building
Washington, D. C. 20005
Counsel for International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America
Airlines Division

63

BEFORE THE
CIVIL AERONAUTICS BOARD
WASHINGTON, D.C.

PETITION OF THE AIR LINE PILOTS ASSOCIATION, INTERNATIONAL
FOR LEAVE TO INTERVENE

TO THE HONORABLE MEMBERS OF SAID BOARD:

COMES NOW, the Air Line Pilots Association, International, hereinafter referred to as "ALPA" and states that:

I

ALPA is a voluntary, unincorporated Association acting by and through its duly elected President, Mr. Charles H. Ruby. It is the duly designated collective bargaining agent of certain members of the flight crews employed by common carriers by air engaged in interstate and foreign commerce, operating under certificates of convenience and necessity, issued by, and subject to, the supervisory powers of the Civil Aeronautics Board. As such, the ALPA is the duly qualified bargaining agent for all purposes of the Railway Labor Act, as amended (Title 45, U.S.C., Section 151, et seq.), having been so duly certified by the National Mediation Board on many occasions.

II

On October 20, 1967, an application of Allegheny Airlines, Inc., and Lake Central Airlines, Inc. was filed with this Board seeking the Board's approval of an agreement which would, if approved, effectively merge the operations of the two named carriers. ALPA, in the representative capacity as aforesaid, has heretofore entered into written Employment Agreements with the two named carriers concerning the employment rights, benefits and working conditions, etc. of flight crew members (certain flight deck operating crew members and cabin attendants) in its service. These aforementioned Employment Agreements, both oral and in writing,

specifically regulate the matters of wages, hours, and conditions of service of the employees aforesaid, particularly but not limited to the matters of seniority, promotions, scheduling, vacations, transfers, retirements, and many other conditions peculiarly applicable to employers exercising the rights, privileges, and concessions of scheduled air carriers under the Federal Aviation Act of 1958. ALPA is likewise the collective bargaining agent for and has negotiated Employment Agreements with most of the scheduled air carriers holding certificates of convenience and necessity issued pursuant to the terms of the Federal Aviation Act - all said Employment Agreements continuous in character, having been entered into pursuant to the provisions of the Railway Labor Act, its letter, spirit and objective purposes.

III

By virtue of the provisions of Section 204 (a) and 1002 (b), Federal Aviation Act of 1958, (Title 49, U.S.C., Section 1324 (a), 1482 (b)), this Board is empowered, in the furtherance and development of air commerce, to investigate and inquire into the economic conditions and managerial capabilities of certified carriers, and after a full and complete hearing, assuming that the public interest so requires, it may permit the merger of the two named carriers into an organization to be called Allegheny Airlines, Inc., if carried into execution without an adequate inquiry into the rights of the ALPA and its individual members, would detract from the basic purpose of these proceedings and defeat the declared policies and long and well established practices and precedents established under the Act.

IV

The stability of labor relations with air carriers and their employees has been long considered an essential element of interstate and foreign air transportation. In this context, the Federal Aviation Act encourages collective bargaining in their behalf, and in the furtherance of the efficient and effective operation of aircraft, and for the purpose of assuring a full and free flow of interstate and foreign air transportation without interruption in any manner whatsoever, it is one of the conditions annexed to certificates authorizing an air carrier to engage in air transportation that such carrier comply with Title II of the Railway Labor

Act, as amended (Title 49, U.S.C., Section 481, Sub-Section L, Paragraph (l), et seq.).

The Federal Aviation Act assumes that the integration of air lines by whatever means, without adequate provisions for the preservation of the rights of the employees aforesaid under existing Employment Agreements, will foment labor disturbances and leave the ALPA to remedies outside of these proceedings.

The merger of the two named carriers into Allegheny Airlines, Inc., if approved by the Civil Aeronautics Board, will present issues of a fair and equitable adjustment of the respective employees heretofore mentioned, as well as many other conditions of employment. These issues are deserving of prime consideration by this Board in order to effect a fair, reasonable, and equitable disposition of them. ALPA is competent and qualified to furnish relevant evidence bearing upon this issue as well as the matters of this type and also by reason of its contractual relationship to the parties. As such, it seeks to place before this Board workable formulas which, it believes, will provide a fair and equitable solution relating to the aforementioned matters.

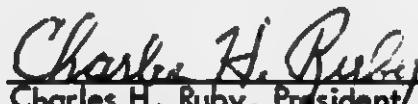
V

Title X, Section 1009, Federal Aviation Act of 1958 (Title 49, U.S.C., Section 1489) provides that in proceedings before this Board "...for the enforcement ofany term, condition, or limitation or any certificates or permit....it shall be lawful to permit the intervention of all persons interested in or affected by the matter under consideration....". By reason of the matter and things herein alleged, ALPA has a statutory right to intervene and actively defend and preserve the many vested contractual rights heretofore mentioned, that in addition, and in accordance with the rules of practice prevailing under authority of the Federal Aviation Act of 1958 (26 F.R. 8054), the ALPA has the right to formally intervene and become a party of the above-entitled proceedings. Unless ALPA is permitted to intervene, it will be unable to establish the adverse affects which merger, if approved, would have upon the many working conditions which have accrued to the employees aforementioned, as represented by the ALPA, as a result of the Employment Agreements entered into with the certificated air carriers involved, all of which represents a valuable and vested claim against such certificated air carriers. Therefore, the ALPA has a direct and substantial interest in these proceedings.

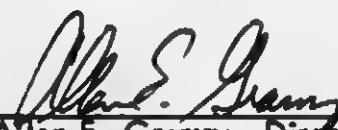
JA-19

WHEREFORE, premises considered, the ALPA prays that leave be granted to intervene in these proceedings in order to fully protect on its behalf and on behalf of its members represented by the ALPA, as individuals, its vested contractual rights with the two named carriers. It is noted that the granting of this Petition will in no wise broaden the issues herein and the proposed inquiry thereon; but on the contrary, will furnish an indispensable complement thereto by admitting an additional party in possession of competent evidence directly relating to the issues to be drawn. Hence, the ALPA respectfully prays that it be made a party to these proceedings with the right to receive notices of, and appear formally in, the forthcoming hearings, to introduce evidence, to produce, examine and cross-examine witnesses and to be heard upon briefs or oral argument, if oral arguments are granted.

Respectfully submitted,



Charles H. Ruby, President
Air Line Pilots Association, International



Allen E. Gramza, Director
Legal Department
Air Line Pilots Association, International

DATED AT CHICAGO, ILLINOIS
THIS 24TH DAY OF OCTOBER, 1967

JA-20

U8

BEFORE THE
CIVIL AERONAUTICS
BOARD
WASHINGTON, D. C.

RECEIVED
DOCKET

OCT 30 12 15 PM '67

CIVIL AERONAUTICS
BOARD

Application of

ALLEGHENY AIRLINES, INC.

and

LAKE CENTRAL AIRLINES, INC.

under Sections 408 and 401 of the
Federal Aviation Act of 1958 for :
approval of the merger of Lake Central
Airlines, Inc. into Allegheny Airlines, :
Inc., and for transfer of Lake Central's
Certificate of Public Convenience and :
Necessity for Route 88 to Allegheny.

Docket 19151

PETITION OF AIR LINE EMPLOYEES
ASSOCIATION, INTERNATIONAL,
FOR LEAVE TO INTERVENE

WYATT JOHNSON
General Counsel
Air Line Employees
Association, International
Suite 509, 100 Biscayne Tow
Miami, Florida 33132

BEFORE THE
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

-----:
Application of :
ALLEGHENY AIRLINES. :
and :
LAKE CENTRAL AIRLINES, INC. :
under Sections 408 and 401 of the : Docket 19151
Federal Aviation Act of 1958 for
approval of the merger of Lake :
Central Airlines, Inc., and for
transfer of Lake Central's :
Certificate of Public Convenience
and Necessity for Route 88 to :
Allegheny.
:

PETITION OF AIR LINE EMPLOYEES ASSOCIATION,
INTERNATIONAL, FOR LEAVE TO INTERVENE

Pursuant to Rule 15 of the Board's Rules of Practice,
the Air Line Employees Association, International, petitions
for leave to intervene in this proceeding and, in support
thereof, states:

1. Petitioner is a voluntary, unincorporated association,
and is the duly designated collective bargaining agent of air
line employees employed by common carriers by air operating
under certificates of public convenience and necessity issued
by the Civil Aeronautics Board and, as such, is the duly
qualified bargaining agent for said employees for all purposes
under the Railway Labor Act, as amended. Petitioner is the
duly elected and qualified bargaining agent for the fleet and
passenger service employees in the service of Lake Central
Airlines, Inc. and has entered into an employment agreement

with such carrier, which said agreement regulates the matters of wages, hours, conditions of service, seniority, promotions, scheduling, vacations, transfers, the adjudication of grievances and other matters customary in such agreements in the air transportation industry.

2. By Joint Application of Allegheny Airlines, Inc. and Lake Central Airlines, Inc. For Approval of Merger and Transfer of Certificate which Application is dated October 20, 1967, the joint petitioners, pursuant to Sections 408 and 401 of the Federal Aviation Act of 1958, as amended, and such other provisions of the Act as may be found applicable, applied to the Civil Aeronautics Board for approval of an agreement of merger (attached to the Joint Application as Appendix A) pursuant to which agreement of merger Lake Central will be merged into Allegheny with Allegheny being the surviving carrier under the name of Allegheny Airlines, Inc. In support of the Application the carriers cited a number of facts relating to their route certificates, corporate status, agreed terms of contract and reasons supporting the proposed merger.

3. The Board has statutory responsibility for, and interest in, the stability of labor relations in air transportation, the encouragement of collective bargaining, the orderly resolution of labor disputes, and compliance by carriers with the provisions of the Railway Labor Act. By virtue thereof, it has been the uniform policy of the Board in proceedings seeking approval of mergers, acquisitions, and transfers of route authority, to condition its approval upon the adoption and observance by the parties of provisions for the protection of employees who may be adversely affected by the proposed action. See Braniff-Mid Continent Merger Case, 15 CAB 708; West Coast-Empire Merger Case, 15 CAB 971;

Delta-Chicago and Southern Merger Case, 16 CAB 647; Flying Tiger- Slick Merger Case, 18 CAB 326; Continental-Pioneer Acquisition Case, 20 CAB 323; Wien Alaska Air, Acquisition of Byers, 23 CAB 428; Colonial-Eastern Acquisition Case, 23 CAB 500; United-Capital Merger Case, 33 CAB 307; United-Western, Acquisition of Air Carrier Property, 11 CAB 701, 23 CAB 61; North Atlantic Route Transfer Case, 12 CAB 124, 14 CAB 910; Seven States Area Investigation, 28 CAB 473.

4. On or about the 1st day of November, 1966, the Petitioner, Air Line Employees Association, International, as collective bargaining agent for the fleet and passenger service employees in the service of Lake Central Airlines, Inc. entered into an agreement with Lake Central Airlines, Inc. The said agreement contains all of the terms and conditions of employment of the said fleet and passenger service employees employed by Lake Central Airlines, Inc., including a recognition clause, a purpose clause, a scope clause, a status clause, definition provisions, hours of service provisions and seniority provisions, holidays and vacations provisions, provisions relating to sick leave, leaves of absence and vacancies, investigation and discipline provisions, wage provisions and other miscellaneous matters. The agreement further contains material relating to the establishment and maintenance of a System Board of Adjustment. The said agreement is presently in full force and extends to February 1, 1970. It covers approximately 425 of Lake Central's employees classified as follows: Assistant Station Manager, Chief Agent, Lead Agent, Relief Agent, Station Agent, Cargo Agent, Forms Agent, Ticket Agent, Reservations Agent, Ramp Service Agent and Baggage Agent. The merger of Lake Central and Allegheny would affect each of these 425 employees.

They have a direct interest in this matter in that presumably they will be utilized by the eventual merged carrier. It is not the intent or purpose of the Petitioner, on the basis of its present information, to oppose the aforementioned application. Rather, Petitioner states to the Civil Aeronautics Board that in the event of the approval of the application, the Petitioner would seek the consideration of the Board in granting the application with the usual labor protective provisions covering those fleet and passenger service employees presently in the service of Lake Central Airlines, Inc., as represented by the Petitioner.

5. Allegheny Airlines, Inc. employs approximately 1100 to 1200 employees in the entire craft and class of clerical, office, fleet and passenger service employees. These employees are unorganized, meaning they are not represented by any collective bargaining agreement. Since the United-Capital Merger, the CAB routinely has included standard labor protective provisions in its orders approving mergers. Petitioner, in a number of recent cases, has sought these labor protective provisions and has not asked for modifications or revisions in the merger proceedings. However, inasmuch as the labor protective provisions by and large safeguard affected employees against loss of income and do not concern other aspects of the industrial relations problems involved with mergers, the Petitioner has considerable experience in attempting to handle in negotiations such problems as organized versus unorganized employees in merged carriers and two or more unions representing the same class and craft of employees. To date negotiations have not provided the answer to these problems which arise in every merger. Therefore, in applying for leave to intervene in this case,

Petitioner respectfully shows to the Board that it intends to seek guidelines by the Board with respect to the integration of the organized and unorganized groups here involved in the craft and class of clerical, office, fleet and passenger service employees of Lake Central. It is the intent of the Petitioner to suggest to the Board, as a condition of the merger, that the Petitioner's contract be governing insofar as is concerned the entire craft and class of the merged carrier. Further, it is the intention of the Petitioner to seek information as to the position of management with respect to this request. Therefore, Petitioner states to the Board that it will reserve its right to consent to or contest the merger on the basis of information developed along the lines mentioned hereinabove during the progress of the merger proceedings.

6. The usual labor protective provisions mentioned hereinabove should be considered by the Board in connection with its consideration of the Application of Lake Central and Allegheny. In addition to this general consideration and the specific considerations enumerated in Paragraph 5 hereinabove, Petitioner seeks the following protective provisions for the employees represented by it:

- (a) That no Lake Central Airlines, Inc. employee represented by the Petitioner will lose his or her job as a result of the proposed merger.
- (b) That the seniority rights of all employees of Lake Central Airlines, Inc. represented by the Petitioner will be protected.
- (c) That any employee of Lake Central Airlines, Inc. represented by the Petitioner ordered or authorized to move his residence shall be guaranteed the rearrangement of forces

provisions specified by the Board in prior cases such as traveling and moving expenses, protection in real estate matters and other provisions relating to change of residence.

WHEREFORE, the Petitioner respectfully requests that the Civil Aeronautics Board issue an order permitting the Petitioner to intervene in the above-entitled cause so that it may receive notices of hearings or other investigative procedures and activities by the Civil Aeronautics Board wherein interested parties may be involved.

Respectfully submitted,

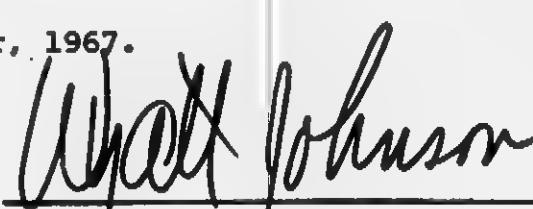
AIR LINE EMPLOYEES ASSOCIATION,
INTERNATIONAL

By


WYATT JOHNSON, General Counsel
Suite 509, 100 Biscayne Tower
Miami, Florida 33132

CERTIFICATE OF SERVICE.

I HEREBY CERTIFY that copies of the foregoing Petition have been served on all parties on whom the Application herein was served, by mailing a copy thereof to said persons, or their counsel of record herein, as required by Rule 8 of the Rules of Practice, this 27th day of October, 1967.


Wyatt Johnson

Signer Original

JA-27

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Nov 1 143 PM '67

BEFORE THE
CIVIL AERONAUTICS
BOARD

CIVIL AERONAUTICS
BOARD

ALLEGHENY AIRLINES, INC., AND :
LAKE CENTRAL AIRLINES, INC. : Docket No. 19151
:

PETITION OF INTERNATIONAL ASSOCIATION OF MACHINISTS
AND AEROSPACE WORKERS FOR LEAVE TO INTERVENE

The International Association of Machinists and Aerospace Workers (IAMAW) respectfully moves the Hearing Examiner and the Board for leave to intervene in the above-entitled proceeding, pursuant to Rule 15 of the Board's Rules of Practice. The following matters are set forth in support of this petition:

I

The IAMAW is the duly authorized representative, pursuant to the provisions of the Railway Labor Act (45 U.S.C.A., 151 et seq.) of the craft or class of mechanics and related employees of Allegheny Airlines, Inc. As such representative, the IAMAW is a party to collective bargaining agreements with this air carrier governing the rates of pay, rules, and working conditions of the employees involved.

II

The employees of Allegheny Airlines represented by the IAMAW have a substantial property and financial interest in the above-entitled proceeding by reason of their contract rights growing out

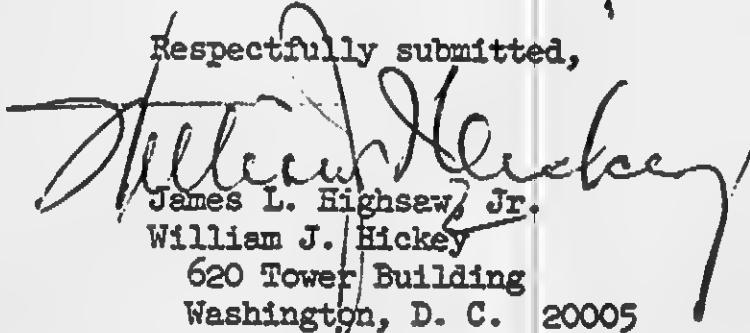
- 2 -

of said collective bargaining agreements and the positions which they hold with the air carrier. The IAMAW, as the duly authorized representative of such employees, also has a property and financial interest in the proceeding based upon such representation and upon the membership of these employees in the IAMAW. The Board has heretofore recognized that this interest entitles the duly authorized representative of employees of an air carrier applicant in a Section 408 proceeding to intervene and be heard in such proceeding. Representatives of an applicant air carrier employees have been granted leave to intervene and have been heard in every merger proceeding conducted by the Board. The interest of the employees as such will not be represented by any other party to the proceeding.

III

WHEREFORE, the IAMAW respectfully petitions the Hearing Examiner and the Board to grant it leave to intervene and participate as a full party in the above-entitled proceeding.

Respectfully submitted,



James L. Highsew, Jr.
William J. Hickey
620 Tower Building
Washington, D. C. 20005

Of Counsel:

MULHOLLAND, HICKEY & LYMAN
620 Tower Building
Washington, D. C. 20005

Attorneys for International Association
of Machinists and Aerospace Workers

November 1, 1967

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

115

ALLEGHENY-LAKE CENTRAL MERGER CASE

DOCKET 19151

REPORT OF PREHEARING CONFERENCE HELD NOVEMBER 9, 1967

The following appearances were entered at the prehearing conference held on the above date, pursuant to notice of the Chief Examiner:

Edwin I. Colodny and William L. Howard for Allegheny Airlines, Inc.
Albert F. Grisard and A. David Mikesell for Lake Central Airlines, Inc.
Alfred V. J. Prather and Edwin H. Seeger for American Airlines, Inc.
Robert N. Duggan and Frederick S. Hird, Jr., for Northwest Airlines,
Inc.

Joseph Paul for Trans World Airlines, Inc.
Robert E. Commerce for the Air Line Dispatchers Association.
Wyatt Johnson for the Air Line Employees Association, International.
Allen E. Gramza for the Air Line Pilots Association, International.
William J. Hickey for the International Association of Machinists and Aerospace Workers.
George N. Kenyon, Jr., for the Bureau of Operating Rights.

Allegheny Airlines, Inc. (Allegheny) and Lake Central Airlines, Inc. (Lake Central), have filed a joint application requesting approval of the agreement which they entered into on October 18, 1967, by which Lake Central would be merged into Allegheny, the latter to be the surviving carrier, and also requesting approval of the transfer of Lake Central's certificate of public convenience and necessity to Allegheny.

Petitions for leave to intervene have been filed by the Air Line Dispatchers Association (ALDA), the Air Line Employees Association, International, the Air Line Pilots Association, International (ALPA), the International Association of Machinists and Aerospace Workers (IAMAW), the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and

116

2.

Helpers of America, Airlines Division, American Airlines, Inc., Northwest Airlines, Inc., and Trans World Airlines, Inc.

THE ISSUES

Bureau Counsel's statement of the issues to be tried in this proceeding, attached hereto as appendix A, has been accepted by the parties.

At the request of Allegheny, the following were also accepted by the parties as issues herein:

(1) Whether the exemptions now held by Lake Central should be transferred to Allegheny, and (2) whether condition (12) of Lake Central's certificate for route 88 should be deleted or modified. The applicants agreed that the latter issue would not involve the acquisition of any new authority.

REQUESTS FOR EVIDENCE

The parties have agreed to comply with the requests for evidence submitted by the Bureau of Operating Rights (BOR) as revised at the conference. The revised BOR requests are attached hereto as appendix B.

After objecting initially to providing the cost savings and added costs which would result from the merger in a "future normal year" as requested in item 20 of BOR's request, Allegheny consented to provide such information to the best of its ability. BOR argued that this information is necessary for a projection of representative operating results of the merged company, and that it would also be required in an ancillary subsidy proceeding if the merger were approved.

At the outset of the discussion regarding the ALPA and ALDA requests for evidence, Allegheny expressed the view that its response to the BOR request would also satisfy the requests of the unions. ALPA disagreed with Allegheny, and concluded its remarks with the statement that its request for information addressed to the applicants was intended to put them on notice as to the proof which ALPA would offer at the hearing.

The request for evidence submitted by ALDA is attached hereto as appendix C. At ALDA's insistence that the applicants respond to its request in at least certain particulars, Allegheny stated that it would deal with the matters covered in the request in its direct case; that it had no objection to considering changes in the labor protective provisions; and that ALDA could provide evidence as to the matters it wants to establish.

STATEMENTS OF POSITION

ALDA takes no position in opposition to the proposed merger unless the Board fails to provide "adequate labor protective provisions." ALPA does not oppose the merger provided "certain labor protective provisions" are made part of the Board's order approving the merger. ALPA considers the labor protective provisions imposed in the United-Capital Merger and Eastern-Mackey Merger Cases to be acceptable. ALDA states that adequate labor protective provisions would be those provided in the United-Capital Merger Case with several suggested changes.

In response to Allegheny's inquiry, the intervenor carriers said that they had no position at this time.

STATEMENT OF ISSUES

A. Issues Under Section 408 of the Federal Aviation Act.

The proposed merger is subject to section 408(a)(1) of the Federal Aviation Act which makes it unlawful for two or more carriers to merge their properties without prior Board approval, or section 408(a)(2) which requires Board approval for the purchase of a substantial part of the properties of one carrier by another. Pursuant to section 408(b) of the Act, the Board shall approve the merger unless the Board finds the merger not consistent with the public interest or that the conditions of section 408 will not be fulfilled. Moreover, the Board "shall not approve any . . . merger . . . which would result in creating a monopoly or monopolies and thereby restrain competition or jeopardize another air carrier not a party to the merger"

The aforementioned considerations embrace, among others, the following legal and factual issues:

1. Will the proposed merger result in an integrated route and system structure with respect both to traffic flow and operational requirements?
2. Will the proposed merger result in improved service (a) between points on the routes of each carrier, (b) between points on routes of the two carriers (inter-carrier service), and (c) between points on routes of the carriers and other points?
3. Will the proposed merger result in any impairment of service now rendered by the two carriers?
4. Will the proposed merger result in creation of a monopoly and thereby restrain competition or jeopardize other air carriers not parties to the agreement?
5. May the effect of the proposed merger be substantially to lessen competition, or to tend to create a monopoly, in any line of commerce in any section of the country?
6. What adverse effects, if any, will the proposed merger have upon other air carriers?
7. Would the commercial revenues of the merged operation be greater than the aggregate commercial revenues of the two carriers operating separately?

STATEMENT OF ISSUES
Continued

8. Would the merged operation incur lower operating expenses than the aggregate operating expenses of the two carriers operating separately?

9. Will the capital investment of the merged operation be less than the aggregate capital investment of the two carriers operating separately?

10. What effect on return on investment will any capitalization of payment for intangibles have?

11. Would changes in commercial revenue, operating expenses, and capital investment referred to in (7), (8), and (9) above, result in any improvement in the break-even and subsidy need position of the merged operation over the aggregate break-even and subsidy need position of the two carriers operating separately?

12. What effects, if any, will the proposed merger have upon the employees of each carrier?

a. Will collective bargaining agreements between the carriers and any groups of its employees be affected?

b. Will any employees of the air carriers be adversely affected by the proposed merger? If so, what terms and conditions, if any, should the Board impose in the interest of such employees?

13. Is the mutual consideration upon which the merger is based fair and reasonable?

a. Is it fair to both majority and minority stockholders of each company?

b. Does it result in discrimination in favor of or against any one of the two carriers, the creditors or stockholders thereof, or any other individual or group?

c. Does it involve any payment for the intangible property of any one of the two carriers, particularly certificates of public convenience and necessity?

d. If the consideration involves any payment for intangible property, is such payment reasonable or will it result in diluting the stock or assets of either company?

Appendix B
Page 1 of 8
Conference Report
Docket 19151

BUREAU COUNSEL'S REQUESTS FOR EVIDENCE

A. The merger parties are requested to submit, together or individually, as appropriate the following:

1. A narrative statement detailing the negotiations which resulted in the merger agreement, including the history of the negotiations from their inception to culmination, citing the terms and conditions of any offers and counter offers. All drafts of suggested agreements or portions thereof, whether or not finally agreed upon by the parties should also be furnished.

2. Description of agreements relating to, collateral to, subsidiary to, supplemental, or otherwise affecting the merger agreement between the merger parties, or between each company and/or the officers and directors and any person, or between any persons, including, inter alia, contracts for employment, pension, retirement, options, voting of stock, and designation of directors and officers of the surviving company. Include all agreements between such persons respecting the purchase price paid or to be paid for stock or other interest in the acquired carrier. If there are no such agreements, a statement to that effect should be made. (Copies of such agreements should be available for inspection if requested).

3. A statement setting forth the substance of any oral agreement or understanding in the nature of that stated in paragraph 2, above, the date or dates of any such agreements or understandings, and the parties thereto. If there are no such agreements or understandings, a statement to that effect should be made.

4. A copy of the minutes of all meetings of the respective boards of directors, executive committees, and of any other committees or of the stockholders of the two corporations relating to the proposed merger or any subsidiary, supplemental or effectuating agreements or understandings, as called for in paragraphs 2 and 3, above.

5. Copies of any letters, proxy statements, prospectus, or other communications of the merger parties to their respective stockholders concerning the proposed merger.

6. Lists, as of 12/31/66 and as of 10/18/67 of all stockholders of Lake Central and as of March and November 1967 of all stockholders of Allegheny owning 1 percent or more of the outstanding shares of stock or warrants of such company, showing the names, addresses, and the amounts, percentages, and classes of stock held by each such stockholder. The lists shall indicate the name and address of each beneficial owner of such stock,

BUREAU COUNSEL'S REQUESTS FOR EVIDENCE
Continued

- e. Advertising and Publicity;
- f. Legal;
- g. Other Professional and Technical Services;
- h. Corporate and Fiscal Expenses;
- i. Electronic Data Processing;
- j. Reservations and Sales;
- k. Tariffs and Schedules;
- l. Equipment and Facilities;
- m. Other Supplies;
- n. Other Rentals;
- o. Personnel Salaries and Expenses not Reflected Elsewhere;
- p. Other Applicable Areas.

The above information should be fully supported with detail providing the basis and showing the computations in each area.

21. A projection of subsidy payments to the merged company under the provisions of Class Rate IV for the year ended 3/31/69 (item 19 operating assumptions), and similar computations for Allegheny and Lake Central individually as separate operating entities (item 18 assumptions).

22. Show the number of personnel by categories, employed by each of the carriers, who, in the event the proposed merger were approved, would be furloughed, transferred to other duties or transferred to duty stations other than those in which they are now employed, and the plan under which such changes are to be made.

23. List, by city pair markets, the extent to which monopolies will be created and the extent to which competition will be reduced.

BUREAU COUNSEL'S REQUESTS FOR EVIDENCE
Continued

24. Are there any agreements or plans for the protection and/or compensation of employees who would be affected by the merger? If so, give details and estimated costs therefor. Should the labor protective provisions recommended by the Board in the United-Capital Merger Case (33 C.A.B. 307) and applied by the Board in the Frontier-Central Merger Case (Order E-25626, served 9/1/67) be applied? If so, what are the estimated costs of such provisions?

25. Furnish a listing of agreements with all labor organizations with which Allegheny and Lake Central bargain collectively, and expiration dates of such agreements. Copies to be made available on demand.

26. Submit a list of any city pairs not already indicated in items 18(b) or 19 which have future potential for effective single-plane service on the part of the merged carrier.

B. Each merger carrier is requested to submit the following:

1. Show in full detail all flight equipment including spares and ground facilities by common stations (as to the other stations, provide major ground facilities and leases) owned or leased as of the most recent available date. For aircraft, show the number, net book value, estimated present market value, lift capacity (by seat and weight), and range and cruising speed of each type of aircraft.

2. Show in full detail all flight equipment and ground facilities, as in item 1, presently contracted for purchase or lease at a future date, indicating dates of delivery or completion, the contract prices, and terms of purchase or lease.

3. State fully what plans each carrier had for financing the new equipment prior to negotiations for the agreement. State also to what extent, if any, such plan has been implemented. Show how these plans would be affected upon consummation of the merger.

4. What are each carrier's plans for the acquisition of additional property, equipment, or facilities if the Board disapproves the proposed agreement? What additional financial arrangements will be required in that event? By what means will additional finances be secured?

Appendix B
Page 8 of 8
Conference Report
Docket 19151

BUREAU COUNSEL'S REQUESTS FOR EVIDENCE
Continued

C. The intervening carriers are requested to submit by market for the year ended 3/31/69 an estimate of traffic and revenues which would be diverted as a result of the merger.

D. Merger carriers and unions to submit the following:

1. Statements as to whether the language of the United-Capital labor provisions is acceptable.
2. To the extent any changes in such provisions are sought:
 - a. Set forth the precise language of any additions, amendments, or other changes to existing provisions; and
 - b. Explain in detail the reasons for any such changes, together with evidentiary support.

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

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SERVED NOV 21 1967

Issued under delegated authority
November 20, 1967

ALLEGHENY-LAKE CENTRAL MERGER CASE :

Docket 19151

ORDER GRANTING INTERVENTION

Petitions for leave to intervene in the above-entitled proceeding have been filed by the Air Line Dispatchers Association, the Air Line Employees Association, International, the Air Line Pilots Association, International, the International Association of Machinists and Aerospace Workers, the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Airlines Division, American Airlines, Inc., Northwest Airlines, Inc., and Trans World Airlines, Inc.

Pursuant to authority delegated by the Board in its Regulations, 14 CFR 385.11, it is found that the petitioners have a sufficient economic interest in this proceeding to justify their participation as parties.

ACCORDINGLY, IT IS ORDERED:

That the above-described petitions for leave to intervene herein be, and they hereby are, granted.

Persons entitled to petition the Board for review of this order pursuant to the Board's Regulations, 14 CFR 385.50, may file such petitions within 10 days after the date of service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board upon expiration of the above period unless before that date a petition for review thereof is filed or the Board gives notice that it will review this order on its own motion.

By Milton H. Shapiro
Hearing Examiner

HAROLD R. SANDERSON

Secretary

(SEAL)

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Order No. E-26129

Issued under delegated authority
December 15, 1967

SERVED DEC 18 1967

ALLEGHENY-LAKE CENTRAL MERGER CASE : Docket 19151

ORDER GRANTING INTERVENTION

A joint petition for leave to intervene in the above-entitled proceeding has been filed by the Akron-Canton Regional Airport Authority and the Chambers of Commerce of Akron, Canton, Massillon and Alliance, Ohio (Akron-Canton parties).

Pursuant to authority delegated by the Board in its Regulations, 14 CFR 385.11, it is found that the petitioners have a sufficient economic interest in this proceeding to justify their participation and are entitled to intervene.

ACCORDINGLY, IT IS ORDERED:

That the petition for leave to intervene filed by the Akron-Canton Regional Airport Authority and the Chambers of Commerce of Akron, Canton, Massillon and Alliance, Ohio, be and it hereby is granted.

Persons entitled to petition the Board for review of this order pursuant to the Board's Regulations, 14 CFR 385.50, may file such petitions within 10 days after the date of service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board upon expiration of the above period unless before that date a petition for review thereof is filed or the Board gives notice that it will review this order on its own motion.

By Milton H. Shapiro
Hearing Examiner

HAROLD R. SANDERSON

Secretary

(SEAL)

(6)

BEFORE THE
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

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CIVIL AERONAUTICS BOARD
Docket No. 19151

Application of	:
ALLEGHENY AIRLINES, INC.	:
and	:
LAKE CENTRAL AIRLINES, INC.	:
under Sections 408 and 401 of the	:
Federal Aviation Act of 1958 for	Docket No. 19151
approval of the merger of Lake	:
Central Airlines, Inc., into	
Allegheny Airlines, Inc., and for	:
transfer of Lake Central's Certi-	
ficate of Public Convenience and	:
Necessity for Route 88 to	
Allegheny.	:

STATEMENT OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AIRLINES
DIVISION, IN RESPONSE TO REQUEST OF BUREAU COUNSEL

The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Airlines Division, hereinafter referred to as "IBT", is a labor organization, and makes the following statement and submission in response to the request of the Bureau Counsel, dated November 28, 1967.

The IBT has exclusive bargaining rights for mechanics and stock clerks, together with related classifications employed by Lake Central Airlines.

IBT supports the application for merger assuming that the final order will impose appropriate labor protective clauses, and recommends the following amendments and changes in the so-called Standard Labor Protective Provisions which were imposed in the United-Capital merger. With these changes the standard clauses would be acceptable to the IBT.

1. There should be added to Section 1 and other parts of the Standard Provisions, where appropriate, language which would provide that the burden of proof would be upon the carrier where a dispute arose as to whether the conditions of employment of the employees were adversely affected by the merger. As it stands now, the employee would have an almost impossible task if the burden were on him to prove the connection between the merger and its ill effects upon employment. This specific change to be incorporated in Section 1 of the Standard Provisions is as follows: After the first sentence, add a new sentence to read:

"Provided that there shall be assumed that such changes are solely due to and resulting from such merger unless the carrier can controvert such assumption by substantial evidence; Said proviso shall have application throughout the sections which follow wherever reference is made to changes in employment conditions as a result of the merger."

2. The IBT submits that the experience of many years with many mergers demonstrates that the period of three years specified as that during which the employees shall be protected by the Standard Provisions is unrealistic and too limited a time. We propose that the period should be four years. To accomplish this, the words "three years" should be changed to read "four years" in sections 4(d), 8(a) and 9(c).

3. The provisions relating to arbitration set forth in Section 13 are extremely vague as to the mechanics establishing arbitration machinery, i.e., as to the exact technique in employing arbitration. The uncertainty engendered by this vague and general language should be eliminated by substituting a provision which would require the parties to select a neutral arbitrator and in the event that they cannot agree, that arbitrator shall be selected upon the recommendations of the National Mediation Board.

4. IBT proposes also that the Board provide a more definite time schedule during which the carrier and the collective bargaining representative are to commence and carry out negotiations where such action is required in order to work out appropriate adjustments under the changes resulting from the merger. The advantages of eliminating confusion and dissension that automatically arises during this period of uncertainty require that this modification be made.

For the reasons as stated herein, the Airlines Division of the IBT requests that the changes in the Labor Protective Provisions be made accordingly.

Furthermore, it is the intention of the IBT that this submission will also constitute its Direct Exhibits and Testimony in connection with this proceeding.

Respectfully submitted,

Herbert S. Thatcher
HERBERT S. THATCHER
DONALD M. MURTHA
1009 Tower Building
Washington, D.C. 20005

Counsel for Airlines Division,
International Brotherhood of Teamsters

TESTIMONY OF LESLIE O. BARNES

My name is Leslie O. Barnes. I am President of Allegheny Airlines, Inc.

I appear in this proceeding in support of the proposed merger of Allegheny and Lake Central Airlines.

I intend to outline in brief the reasons why I believe this proposed merger is in the public interest.

From the standpoint of the public to be served, the employees of both companies, and the shareholders of both companies, I believe that this merger will produce significant benefits.

As the map of the combined route system clearly shows, Allegheny and Lake Central's present route systems adjoin each other at nine common stations, including six major terminal points, and serve a region which is integrated between the Northeast Middle Atlantic states area of Allegheny and the Mid-west area of Lake Central. It is obvious that these two areas are economically integrated and have a substantial volume of travel flow between the two areas. The resulting combination of the two systems provides an opportunity to improve public service by operating through schedules between the two systems, thus providing many new single-plane services. In addition, new one carrier services would become available between many pairs of points.

From an operational standpoint the expanded route system will permit more efficient utilization of the flight equipment of both companies. We also expect the merger to ultimately produce cost savings by eliminating duplication of facilities and equipment, as well as to result in savings in overhead and administrative costs. Other witnesses sponsor various exhibits which reflect the detail of these conclusions.

Docket 19151

T-1 (Rev.)
Page 2 of 7

From the standpoint of the employees of both companies, I believe that the merger will provide a greater opportunity for all concerned due to the growth potential of welding the two systems. Increased employee opportunity for advancement should come readily. In addition, the merger will add important benefits for the employees of Lake Central. Allegheny plans to provide its prevailing wage and salary rates to all employees of the surviving corporation. Allegheny's pay and fringe benefits are generally higher than the Lake Central wage levels. In exhibits JE-264 and 265, the cost of equalizing the Lake Central employees at the higher Allegheny rates is set forth.

As has been noted in exhibit JE-280 (Rev.), Allegheny intends to offer employment to all Lake Central employees to the greatest extent feasible. However, a 10% reduction in general management expense is being budgeted as a matter of policy. In addition, Allegheny has stated its willingness to accept all of the labor protective provisions of the United-Capital Merger Case. In this connection I wish to state Allegheny's position that while it is willing to accept all of the burdens of the United-Capital labor protective provisions, we are not agreeable and would resist any attempt to modify these conditions in any way which would increase the cost of the merger to Allegheny or impose burdens upon the company differing from those which are now set forth in the provisions. We have refrained from proposing any modifications to these conditions since we believe that the United-Capital provisions have been applied by the C.A.B. in several recent mergers and there is no reason to litigate this issue in this proceeding. Nothing I have seen presented by any of the proponents of changes convinces me that there is any basis for change.

In this connection I should note that Allegheny has had one of the finest records of personnel relations in the airline industry. We have dealt with organized and unorganized employees over the years in a fair and equitable manner, and have always met or exceeded the highest wage scales in our segment of the industry. There has never been a strike in the history of Allegheny Airlines. We do not intend, simply because of the merger of Lake Central and Allegheny, to change our historic policy of an outstanding relationship with our employees. The success or failure of operations of the combined companies will be dependent upon the efforts of our entire employee group from one end of the spectrum to the other, and it is my intention to insure that our personnel relations continue on the highest level. The fact that we are of the opinion that the labor agreements negotiated by Lake Central with certain unions are not legally applicable to the employees of Lake Central when they become employees of Allegheny, should not be construed in any way to alter this policy. Any group of Allegheny employees is, of course, free to seek a representation election under the Railway Labor Act, and Allegheny will deal with any unions so recognized in the normal course of business.

From a shareholder viewpoint, while the shareholders cannot anticipate immediate benefit through dividends, we believe that the long-range profit potential as a result of this merger is most promising.

At this point I wish to state that Allegheny is very much aware of the fact that Lake Central has not reported a good year from a financial standpoint. For the first eleven months of 1967 its net loss approximates \$4 million. The company has had well-publicized problems with the Nord aircraft, and has undoubtedly suffered in

its over-all revenue generation as a result of the grounding of this fleet for a substantial period of time. Lake Central has estimated that the period from April 1968 through March 1969 will provide a return to more normal load factors on its system, sufficient to yield a slight profit after interest.

From the standpoint of evaluating the economic impact of the merger, there are two key factors to consider:

- 1: scheduling
- 2: the "digestion" period

As our exhibits indicate, we do anticipate that the merger will produce a net profit in the first 12 months of operation. The net effect of the service changes and the cost changes due to the merger is a net profit of approximately \$100,000 in the first 12 months of actual operation of the merged carrier. In my opinion, it would be highly unusual to anticipate that any significant net economic improvement from a merger could be realized in the first year of operation. A period of adjustment required to merge the operations of the two companies is necessary, and will of course produce a period of disruptions of one sort and another. From the standpoint of the impact on services which can be operated, the volume of through scheduling utilizing the certificate authorities of both carriers will be relatively modest during the first year of the merger, though we estimate it will generate \$3 million of net added revenue. As is noted in our exhibit JE-250 we have attempted to schedule the new carrier with a minimum of disruption to each carrier's system. As a matter of policy I do not believe that the merged carrier should eliminate existing services on either carrier's system, in order to provide other services which could be provided as a result of the merged carrier's authority

without a sound basis for so doing. The schedules reflected in these exhibits are all feasible by realignment of services without serious disruption to either carrier's system. Furthermore, these schedules can be operated without additional equipment beyond that which is anticipated for the combined carrier during the initial year of operation.

Turning next to what we anticipate after the initial year. I do expect that the revenue potential will be substantially greater than the level reflected in the first year's operations.

As we have shown on exhibit JE-263, there are a number of important markets which could receive new or additional single-plane service as a result of this merger. Timing with regard to implementation of these services will be dependent on aircraft availability, crew and other related provisioning, and a period of experimentation with regard to scheduling the combined system so as to produce the overall best service and profit combination.

In addition to the markets which would receive new through services, it is our opinion that there are several markets in which Lake Central holds authority which will provide additional sources of revenue at such time as Allegheny has additional equipment time available to add service. Lake Central has not had sufficient resources to exploit fully the potential of certain markets within its certificated system. Examples of such markets are Baltimore-St. Louis and Buffalo-Indianapolis/St. Louis. We intend to develop services in those markets within Lake Central's present system which, after thorough examination, we believe will support added services.

With regard to the impact of the merger on subsidy, it is clear that no reduction in subsidy due to the merger can be anticipated in the first year of operation.

Our estimates indicate that in the first year of operation, the Class Rate payments to the merged carrier would be reduced by about \$369,000 due to the merger, whereas the impact of the merger is not a profit in this period. In order to have the Class Rate formula accurately reflect the economic impact of the first year's operation, an upward ad hoc adjustment would be required.

With regard to subsidy reduction for the period beyond the initial year of operation, we anticipate that as the revenue generation of the merged company increases to its full potential, there will be a substantial reduction in subsidy through the operation of the revenue growth adjustment factor of the Class Rate. For every million dollars of additional passenger revenue, the government will receive a reduction in subsidy to the extent of approximately \$80,000. While we have made no estimates of the economic impact of the merged carrier's operations in the second year, I am confident that the profit due to the merger, and the ability to achieve a greater degree of overall efficiency in operations, will produce sufficient profit to absorb the reduction in subsidy which will occur under the formula. It should be noted in this regard, however, that whereas Allegheny and Lake Central will have a combined subsidy of approximately \$8 million in 1967, it is estimated that this level under the Class Rate IV formula will decline by \$2.5 million to a total of only \$5.5 million for the 12 months ended March 31, 1969, assuming each carrier operates independently. This substantial reduction in subsidy would occur as a result of the projected revenue growth of the two carriers, with approximately \$1.8 million of the reduction being absorbed by Allegheny.

Docket 19151

T-1 (Rev.)
Page 7 of 7

In conclusion, I wish to express the confidence of the directors and management of the applicants in the proposal which is before the Board. Its approval will be in the interest of all concerned - the public, the employees, the shareholders, and the government.

TESTIMONY OF ROBERT LEBUHN

My name is Robert LeBuhn.

I am Chairman of the Board of Lake Central Airlines, a position I have held since October, 1966. The purpose of my testimony is to advise the Board of certain additional financing which has been accomplished by Lake Central since the merger agreement on October 18, 1967.

On June 30, 1967, Lake Central completed a \$6 million offering to its shareholders. This financing provided working capital and enabled Lake Central to complete the conversion of its fleet to all turboprop type airplanes. It was estimated by management at that time that Lake Central would again reach a breakeven operation in October, 1967.

While operations improved substantially in the second half of 1967 in terms of an increase in available seat miles, a higher completion factor; improved on-time performance; and a general lowering of unit costs; passenger load factors did not respond to the Company's improved service.

For the year ending December 31, 1967, Lake Central's loss will approximate \$4,100,000 after a Federal Income Tax credit of approximately \$275,000; \$1,127,000 of the loss was incurred in the quarter ending September 30, 1967; \$365,000 in October; \$387,000 in November; and an estimated \$500,000 in December.

In late November it was evident that with the continuing losses, the Company would not be able to maintain the covenants under the Company's credit agreement dated June 21, 1967, and additional cash (working capital) would be necessary for Lake Central to continue its operations. At this time Lake Central obtained \$500,000 from Mr. Perry R. Bass and associates who purchased Lake Central Common

Stock through the exercise of Lake Central Common Stock Purchase Warrants.

It was determined by the management of Lake Central that a projection should be made through the first six months of 1968 to determine the amount of additional working capital which would be required to sustain the Company, June 30, 1968, being the cut-off date in the Lake Central merger agreement with Allegheny Airlines dated October 18, 1967.

In late December, 1967, and early January, 1968, Mr. Ferguson and I contacted several institutional investors in New York City. After a series of discussions and negotiations, Lake Central agreed to sell to Central Securities, Inc. 100,000 shares of Lake Central Common Stock and 25,000 Common Stock Purchase Warrants for \$600,000; and to Bessemer Securities Corporation, 200,000 shares of Lake Central Common Stock and 50,000 Common Stock Purchase Warrants for \$1,200,000. This transaction, totaling \$1,800,000, was consummated on January 15, 1968. If further additional working capital is required by Lake Central prior to June 30, 1968, Mr. Bass and his associates have advised the Company they are prepared to exercise Common Stock Purchase Warrants held by them to provide up to \$500,000 of additional funds.

In an effort to reduce the projected losses for the first six months of 1968, Lake Central has undertaken an intensive review of its schedules in an effort to improve the overall load factor and cut back mileage in markets which have not responded to Lake Central's increased service. Of course, these schedule changes are being made consistent with Lake Central's public service obligations.

With the projected reduction in total mileage amounting to over 100,000 plane miles per month by March, it has been necessary to furlough some flight

Docket 19151

T-4
Page 3 of 3

personnel. Other personnel actions in this area will be taken where necessary. While unit costs in the indirect area have been trending downward, there is a need for a reduction in total indirect costs to bring these indirect costs in line with projected revenues. Therefore, as attrition and turnover take place in these cost areas, replacements are being made only as absolutely necessary. Also there have been reductions in certain management salaries. It is our purpose to minimize Lake Central's losses and return to a profitable operation as soon as possible.

Docket 19151

Joint Exhibit No. 119
Page 1 of 1ALLEGHENY AIRLINES, INC.COLLECTIVE BARGAINING
AGREEMENTS IN EFFECT 10/18/67
(Information Response Item A. 25)

<u>Union</u>	<u>Representing</u>	<u>Expiration Date</u>
International Association of Machinists	Mechanics	Dec. 31, 1968
Air Line Pilots Association International	Airline Pilots	Sept. 30, 1968
Air Line Pilots Association International (Steward and Stewardess Division)	Hostesses	Sept. 30, 1969

JA-55

Docket 19151

Joint Exhibit No. 120
Page 1 of 1

LAKE CENTRAL AIRLINES, INC.
Labor Agreements
(Information Request Item A.25)

<u>Craft or Class</u>	<u>Labor Organization</u>	<u>Expiration Date</u>
Stewardesses	Air Line Pilots Association, Intl.	March 1, 1968
Pilots	Air Line Pilots Association, Intl.	August 1, 1968
Dispatchers	Air Line Dispatchers Association	June 30, 1969
Mechanics and Related Employees	International Brotherhood of Teamsters Chauffeurs, Warehousemen and Helpers	January 1, 1970
Fleet and Passenger Service Employees	Air Line Employees Association, Intl.	February 1, 1970

AGREEMENT OF MERGER

AGREEMENT OF MERGER dated as of October 18, 1967 between ALLEGHENY AIRLINES, INC. (hereinafter sometimes called "Allegheny" and sometimes called the "Surviving Corporation") and a majority of its Directors, and LAKE CENTRAL AIRLINES, INC. (hereinafter called "Lake Central") and a majority of its Directors, (Allegheny and Lake Central being sometimes herein collectively called the "Constituent Corporations").

WITNESSETH:

WHEREAS, the Constituent Corporations are both organized and existing under the laws of the State of Delaware; and

WHEREAS, Allegheny is authorized by its certificate of incorporation to issue 5,000,000 shares of Common Stock, par value One (\$1.00) Dollar per share, of which as of September 30, 1967 there were 1,838,091 shares issued and outstanding, 91,800 shares reserved for issue upon the exercise of stock options granted to certain key employees, 270,000 shares reserved for issue upon the exercise of its Common Stock Purchase Warrants expiring May 15, 1974, and 500,000 shares reserved for issue upon the exercise of its Common Stock Purchase Warrants expiring April 1, 1987; and

WHEREAS, Lake Central is authorized by its certificate of incorporation to issue (i) 35,741 shares of Convertible Preferred Stock, par value Twenty (\$20.00) Dollars per share, of which as of September 30, 1967 there were 34,566 shares issued and outstanding and (ii) 3,000,000 shares of Common Stock, par value One (\$1.00) Dollar per share of which as of September 30, 1967 there were 1,334,911 shares issued and outstanding, 86,416 reserved for issue upon the conversion of its Preferred Stock, 227,581 shares reserved for issue upon the conversion of its Convertible Subordinated Debentures, and 329,920 shares reserved for issue upon the exercise of its Common Stock Purchase Warrants; and

WHEREAS, the respective Boards of Directors of the Constituent Corporations, by resolutions duly adopted, have approved this Agreement and have declared it advisable and in the best interests of the respective corporations and their stockholders that Allegheny and Lake Central be combined by merging Lake Central into Allegheny on the terms and conditions hereinafter set forth and in accordance with the laws of the State of Delaware.

Now, THEREFORE, the Constituent Corporations, parties to this Agreement, by and between their respective Boards of Directors, in consideration of the mutual covenants, agreements and provisions herein contained, agree that Allegheny will merge into itself Lake Central, and that Lake Central be merged into Allegheny, pursuant to Section 251 of the General Corporation Law of the State of Delaware, and hereby agree upon and prescribe the terms and conditions of said merger and the mode of carrying the same into effect as follows:

ARTICLE I CONSTITUENT CORPORATIONS

1.01 On the effective date of the merger, Allegheny and Lake Central shall be combined into a single corporation by merging Lake Central into Allegheny in accordance with Section 251 of the General Corporation Law of the State of Delaware.

ARTICLE II CERTIFICATE OF INCORPORATION

2.01 On the effective date of the merger, the certificate of incorporation of Allegheny as in effect on the date hereof shall be and remain the certificate of incorporation of the Surviving Corporation until amended in the manner provided by law and the certificate of incorporation.

ARTICLE III

BY-LAWS OF THE SURVIVING CORPORATION

3.01 On the effective date of the merger, the by-laws of Allegheny shall be amended to provide for a Board of Directors consisting of twenty-one members, and the by-laws of Allegheny, as so amended, shall be and remain the by-laws of the Surviving Corporation until they are further amended, altered or repealed as provided therein or by law.

ARTICLE IV

DIRECTORS OF THE SURVIVING CORPORATION

4.01 On the effective date of the merger, the persons whose names and addresses are set forth below shall be the Directors of the Surviving Corporation:

<u>Name</u>	<u>Address</u>
Leslie O. Barnes	Norbeck, Maryland
Harry W. Besse	Gilmanton, New Hampshire
Gilbert T. Bowman	Pittsburgh, Pennsylvania
Jerome C. Eppler	Morristown, New Jersey
M. M. ErSelcuk	Lafayette, Indiana
L. Thomas Ferguson	Indianapolis, Indiana
Robert F. George	Denver, Colorado
Robert H. George	Golden Beach, Florida
Henry R. Hallowell	Merion Station, Pennsylvania
Robert LeBuhn	Morristown, New Jersey
Robert M. Love	Vineyard Haven, Massachusetts
Philip V. Mattes	Clarks Summit, Pennsylvania
Nelson S. Mead	Dayton, Ohio
Henry A. Satterwhite	Bradford, Pennsylvania
Walter J. Short	Arlington, Virginia
Robert B. Stewart	Lafayette, Indiana
Samuel R. Sutphin	Indianapolis, Indiana
Corcoran Thom, Jr.	Washington, D. C.
Jack A. Vickers	Denver, Colorado
Roy L. Whistler	Lafayette, Indiana
Perry R. Bass	Fort Worth, Texas

4.02 From and after the effective date of the merger, the Directors of the Surviving Corporation shall hold office, subject to the by-laws of the Surviving Corporation, until the next annual election following the merger, and until their successors are duly elected and qualified.

ARTICLE V

EMPLOYEES OF THE SURVIVING CORPORATION

5.01 The Surviving Corporation will accept reasonable labor protective provisions of the character and extent previously prescribed by the Civil Aeronautics Board in similar situations, which provide, among other things, for allowances for certain employees who may be displaced or dismissed as the result of the merger.

ARTICLE VI

MANNER OF CONVERTING SHARES INTO SHARES
OF THE SURVIVING CORPORATION

6.01 The Lake Central Preferred Stock shall be redeemed or converted as hereafter provided, and the manner of converting the shares of the Constituent Corporations into shares of the Surviving Corporation is as follows:

(a) Each share of Lake Central's Preferred Stock, par value \$20.00 per share, issued and outstanding on the effective date of the merger is hereby converted as of said date into one and one-quarter (1.25) full-paid and non-assessable shares of Common Stock of the Surviving Corporation.

(b) Each of the shares of stock of Allegheny issued and outstanding on the effective date of the merger shall remain and be outstanding as a share of the Surviving Corporation and shall not be modified in any way by this Agreement or the merger.

(c) Each share of Common Stock of Lake Central issued and outstanding on the effective date of the merger is hereby converted as of said date into one half (0.5) of one full-paid and non-assessable share of Common Stock of the Surviving Corporation.

6.02 As promptly as practicable after the effective date of the merger, each holder of an outstanding certificate or certificates theretofore representing shares of Lake Central Preferred or Common Stock may surrender the same to an agent or agents designated by the Surviving Corporation, and such holder shall be entitled upon such surrender to receive in exchange therefor a certificate or certificates representing the number of full shares of Common Stock of the Surviving Corporation into which the shares of Lake Central theretofore represented by the certificate or certificates so surrendered shall have been converted as aforesaid. Until so surrendered, each outstanding certificate which, prior to the effective date of the merger, represented shares of Lake Central Preferred or Common Stock, shall be deemed for all corporate purposes (except as hereinafter provided with respect to the payment of dividends on shares of the Surviving Corporation resulting from former ownership of Lake Central shares), to evidence ownership of the number of full shares of stock into which the shares of Lake Central (which, prior to the effective date of the merger, were represented thereby) shall have been so converted. Unless and until such outstanding certificates formerly representing shares of Lake Central Preferred or Common Stock are so surrendered, no dividend payable to holders of record of the capital stock of the Surviving Corporation as of any date subsequent to the effective date of the merger shall be paid to the holder of such outstanding certificates in respect thereof. Upon surrender of such outstanding certificates, however, there shall be paid to the record holder of the Certificates of stock of the Surviving Corporation issued in exchange therefor the amount of dividends which theretofore became payable with respect to such full shares of capital stock of the Surviving Corporation. No interest shall be payable with respect to the payment of such dividends on surrender of outstanding certificates. All dividends unclaimed at the end of six (6) years from the effective date of the merger shall be released or repaid by the agent or agents to the Surviving Corporation, after which the holders of the shares not receiving payment of such dividends shall look as general creditors only to the Surviving Corporation for payment thereof.

6.03 Certificates representing fractional shares of Common Stock of the Surviving Corporation will not be issued. An agent or agents appointed by the Surviving Corporation will hold for the account of the former holders of Lake Central Preferred or Common Stock who would otherwise be entitled to receive fractional interest in shares of the Surviving Corporation's stock a certificate or certificates for the aggregate number of shares of such stock of the Surviving Corporation called for by all such fractional interests, and will mail to each such holder a non-transferable order form by which such holder will, upon surrender of his certificate for exchange, be afforded the opportunity for a period fixed by the Surviving Corporation of approximately 90 days after the effective date of the merger to instruct such agent or agents (acting for him) either to sell such fractional interest or to purchase an additional

fractional interest sufficient to entitle him to one full share of Common Stock of the Surviving Corporation. No such holder will be entitled to voting, dividend or any other rights as a shareholder with respect to such fractional interests, except that dividends received by such agent or agents with respect to such fractional interest shall be paid to such holder without interest upon surrender of his certificates representing Preferred or Common Shares of Lake Central. At the expiration of such period, such agent or agents will sell the number of full shares representing the aggregate remaining fractional interests for the account of such holders as shall not have theretofore given instructions to the agent or agents, and the net proceeds of such sale together with any dividends then held by the agent shall be paid pro rata and without interest to such holders upon subsequent surrender of their certificates representing shares of Preferred or Common Stock of Lake Central. All proceeds received from the sale of such fractional shares which are unclaimed at the end of six (6) years from the effective date of the merger shall be released or paid by such agent or agents to the Surviving Corporation, after which the holders of such fractional shares which were sold in accordance with this Section 6.03 shall look as general creditors only to the Surviving Corporation for payment thereof. The Board of Directors of the Surviving Corporation or any appropriate committee thereof is empowered to adopt further rules and regulations concerning the liquidation of fractional interests.

6.04 On and after the effective date of the merger, each holder of an outstanding Convertible Subordinated Debenture of Lake Central shall have the right, upon compliance with the terms and conditions of said Debenture, to convert said Debenture into a number of shares of Common Stock of the Surviving Corporation which shall be the same as the number of shares of Common Stock of the Surviving Corporation receivable upon the effective date of the merger by a holder of a number of shares of Common Stock of Lake Central into which said Debenture might have been converted immediately prior to the effective date of the merger, as provided in the Indenture dated as of November 1, 1964 between Lake Central and Harris Trust and Savings Bank, as Trustee. On or before the effective date of the merger, the Surviving Corporation shall execute with the Trustee under said Indenture a Supplemental Indenture satisfactory in form to the Trustee (and conforming to the Trust Indenture Act of 1939 as in force at the date of execution of the Supplemental Indenture) to the foregoing effect, further providing that, effective on the effective date of the merger, the Surviving Corporation expressly assumes the due and punctual payment of the principal of, premium, if any, and interest on, all such Debentures, according to their tenor, and the due and punctual performance and observance of the covenants and conditions of the aforesaid Indenture to be performed or observed by Lake Central, and making such further provisions, effective on the effective date of the merger, as may be necessary in order that all applicable provisions of said Indenture shall be complied with by the Surviving Corporation.

6.05 On and after the effective date of the merger, each holder of the outstanding Common Stock Purchase Warrants of Lake Central shall, upon the exercise of said Warrant, be entitled to purchase a number of shares of the Common Stock of the Surviving Corporation which shall be the same as the number of shares of Common Stock of the Surviving Corporation receivable upon the effective date of the merger by a holder of a number of shares of Common Stock of Lake Central for which said Warrant might have been exercisable immediately prior to the effective date of the merger, as provided in said Warrant, at the same exercise price per share, and each of said Warrants shall, on the effective date of the merger, become a Warrant of the Surviving Corporation without change in the terms thereof except that any references therein to Common Stock of Lake Central will thereafter be deemed to be references to Common Stock of the Surviving Corporation as aforesaid. On or before the effective date of the merger the Surviving Corporation shall, if requested, enter into an undertaking with Lake Central's Warrant Agent satisfactory in form to the Warrant Agent, to the foregoing effect, further providing that effective on the effective date of the merger the Surviving Corporation expressly assumes the due and punctual performance and observance of any undertakings to said Warrant Agent to be performed or observed by Lake Central, and making such further provisions, effective on the effective date of the merger, as may be necessary in order that all applicable provisions of said Warrants shall be complied with by the Surviving Corporation.

6.06 Each Stock Option of Allegheny issued and outstanding on the effective date of the merger to purchase shares of the Common Stock of Allegheny shall continue as an Option to purchase shares of Common Stock of the Surviving Corporation.

6.07 Each Common Stock Purchase Warrant of Allegheny issued and outstanding on the effective date of the merger entitling the holder thereof upon exercise of such Warrant to purchase shares of the Common Stock of Allegheny, shall continue as a Common Stock Purchase Warrant of the Surviving Corporation entitling the holder thereof, upon exercise of such Warrant, to purchase shares of the Common Stock of the Surviving Corporation.

ARTICLE VII

EMPLOYEE WELFARE PLANS

7.01 All pension, retirement income, disability and health care plans for salaried or hourly paid employees of Lake Central in force on the effective date of the merger to the extent Lake Central may be bound thereby shall be assumed by the Surviving Corporation and continued for the benefit of the present employees of Lake Central employed by the Surviving Corporation, which shall thereafter have all the rights and obligations of Lake Central thereunder, with service to Lake Central prior to the effective date of the merger counted as service to the Surviving Corporation, except that the Surviving Corporation may substitute benefits at least equal in value under any similar plan of the Surviving Corporation with respect to any employees covered by any of the plans of Lake Central.

7.02 All supplemental retirement income or death payment agreements, and all insurance policies owned by Lake Central in connection with such agreements, shall be assumed by the Surviving Corporation, which shall thereafter have all the rights and obligations of Lake Central thereunder, and all such insurance policies shall be transferred to the Surviving Corporation.

ARTICLE VIII

CERTAIN EFFECTS OF MERGER

8.01 On the effective date of the merger, all the rights, privileges, powers and franchises, as well of a public as of a private nature, of each of the Constituent Corporations shall be possessed by the Surviving Corporation, subject to all the restrictions, disabilities and duties of each of the Constituent Corporations and all and singular the rights, privileges, powers and franchises of each of the Constituent Corporations, and all property, real, personal and mixed, and all debts due to any of the Constituent Corporations on whatever account, as well for stock subscriptions as all other things in action or belonging to each of the Constituent Corporations, shall be vested in the Surviving Corporation, and all property, rights, privileges, powers and franchises and all and every other interest shall be thereafter as effectually the property of the Surviving Corporation as they were of the several and respective Constituent Corporations, and the title to any real estate vested by deed or otherwise under the laws of the State of Delaware or otherwise in either of the Constituent Corporations shall not revert or be in any way impaired by reason of the merger herein provided for; but all rights of creditors and all liens upon any property of any of the Constituent Corporations shall be preserved unimpaired, and all debts, liabilities and duties of the respective Constituent Corporations shall upon the effective date of the merger attach to the Surviving Corporation, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it.

8.02. If at any time any further assignments or assurances in law or any other things are necessary or desirable to vest or to perfect or confirm of record in the Surviving Corporation the title to any property or rights of either of the Constituent Corporations, or otherwise to carry out the provisions of this Agreement, the proper officers and directors of the respective Constituent Corporations as of the effective date of the merger shall execute and deliver any and all proper deeds, assignments and assurances in

law, and do all things necessary or proper to vest, perfect or confirm title to such property or rights in the Surviving Corporation, and otherwise to carry out the provisions of this Agreement.

ARTICLE IX

EFFECTIVENESS OF MERGER

9.01 This Agreement shall be submitted separately to the stockholders of Lake Central and to the stockholders of Allegheny, the Surviving Corporation, in accordance with and in the manner provided in the General Corporation Law of the State of Delaware and in their respective certificates of incorporation, and if this Agreement shall be adopted and approved by the vote of the holders of the outstanding stock of Lake Central in the manner and to the extent required by the General Corporation Law of Delaware and the provisions of the certificate of incorporation of Lake Central and by the vote of the holders of the outstanding stock of Allegheny in the manner and to the extent required by the General Corporation Law of the State of Delaware and the provisions of the certificate of incorporation of Allegheny, then this Agreement when signed, sealed, authorized, adopted, delivered, acknowledged and certified in the manner required by law shall be filed by Allegheny in the office of the Secretary of State of the State of Delaware, shall be recorded in the office of the Recorder of Deeds for New Castle County, Delaware, provided that Allegheny shall not so file unless (i) all governmental approvals, permissions and authorizations requisite in connection with the merger shall have been obtained, (ii) if any of the conditions precedent set forth in Article XIII hereof shall have become impossible to fulfill or has not been met by either of the Constituent Corporations, the Board of Directors of the other Constituent Corporation shall have considered the non-fulfillment of such condition precedent and shall have waived any consequent right to terminate this Agreement and authorized Allegheny to make such filing, and (iii) no termination shall have occurred pursuant to Article XIV hereof. Upon the filing by Allegheny of this Agreement in the office of the Secretary of State of the State of Delaware, all conditions precedent to such filing shall be conclusively deemed to have been satisfied. Upon the recordation of a certified copy of this Agreement in the office of the Recorder of Deeds for New Castle County, Delaware, the merger provided for herein shall become effective and this Agreement shall then be taken and be deemed to be the act of merger of Lake Central into Allegheny, the latter of which shall be the Surviving Corporation under the name of Allegheny Airlines, Inc.

9.02 The date upon which this Agreement is recorded in the office of the Recorder of Deeds for New Castle County, as provided in Section 9.01 hereof, shall be the effective date of this Agreement and the effective date of the merger provided for herein.

ARTICLE X

ACCOUNTING TREATMENT

10.01 The merger of Lake Central into Allegheny will be accounted for as a pooling of interests transaction.

10.02 The accounting entries and treatment provided for in Section 10.01 hereof shall be subject to such adjustments, from time to time, as generally accepted accounting principles shall require.

ARTICLE XI

REPRESENTATIONS AND WARRANTIES

11.01 Lake Central represents and warrants as follows:

(a) Lake Central has been duly incorporated and is validly existing as a corporation in good standing under the laws of the State of Delaware with full power and authority (corporate and

other) to own its properties, carry on its business as now conducted and to enter into the merger contemplated hereby;

(b) Lake Central has an authorized capitalization as set forth in the recitals of this Agreement, and all of its outstanding shares of Preferred Stock and Common Stock have been duly and validly authorized and issued and are full-paid and non-assessable;

(c) Lake Central is a duly certificated air carrier and there has been issued to it by the Civil Aeronautics Board and there are in full force and effect certificates of public convenience and necessity which are adequate for the conduct of its business;

(d) Lake Central is duly qualified to do business and is in good standing in each jurisdiction where the conduct of its business or the ownership or leasing of its properties requires such qualification;

(e) Lake Central has delivered to Allegheny, in connection with the execution of this Agreement, (i) a statement of income for the year ended December 31, 1966, and a balance sheet at December 31, 1966, certified by Arthur Andersen & Co., and (ii) a statement of income for the eight months ended August 31, 1967, and a balance sheet at August 31, 1967, certified by the chief financial officer of Lake Central. Lake Central will deliver to Allegheny (i) within 45 days after the end of each month, commencing with September 1967, a balance sheet as of the end of such month and a statement of income for such month and for the period of its fiscal year ended at the end of such month, certified by the chief financial officer of Lake Central, and (ii) on or before March 31, 1968, a statement of income for the year ended December 31, 1967 and a balance sheet at that date certified by Arthur Andersen & Co. All such financial statements delivered to Allegheny have been and will be prepared in accordance with generally accepted accounting principles and practices consistently applied throughout the periods indicated; they are and will be correct and complete, and fairly present, in accordance with generally accepted accounting principles and practices, consistently applied, throughout the periods involved, the financial position and results of operations of Lake Central; and said balance sheets will reflect all liabilities, contingent or otherwise, of Lake Central except liabilities which are not required to be so reflected in accordance with generally accepted accounting principles and practices. Such liabilities not so reflected are not, in the aggregate, material.

(f) All tax liabilities of Lake Central have been paid in full or adequately provided for based on returns filed or have been paid or adequately provided for for the current year. Lake Central's Federal income tax returns have been examined by the Internal Revenue Service through the year ended December 31st, 1964; and proposed net deficiencies of Lake Central's Federal income taxes arising from completed examinations of prior years have been paid in full or adequately provided for.

(g) There is no claim, litigation or administrative proceeding pending or threatened (except such as may be pending before the Civil Aeronautics Board or have been disclosed by Lake Central to Allegheny in writing prior to the execution of this Agreement) which may have a material adverse effect upon or result in any material adverse change in the business, present or prospective, or the operations or properties or the condition, financial or otherwise, of Lake Central, and Lake Central will, between the date hereof and the effective date of the merger, deliver to Allegheny timely further statements as to newly instituted or threatened material claims, litigation or administrative proceedings.

(h) Lake Central is not a party to any contract materially and adversely affecting the business, present or prospective, or the operations or properties or the condition, financial or otherwise of Lake Central, except such as have been disclosed by it to Allegheny in writing prior to the execution of this Agreement.

(i) Lake Central is not in default in the performance, observance or fulfillment of any of its obligations, covenants or conditions contained in any bond, debenture, note or other evidence of indebtedness or in any Indenture or Loan Agreement.

(j) Lake Central has good and marketable title to all of its properties and assets subject to no mortgage or other encumbrance except such as may have been disclosed by Lake Central to Allegheny in writing prior to the execution of this Agreement, and the properties held under leases by Lake Central are held under valid, subsisting and enforceable leases with only such exceptions as are not material and do not adversely affect the present or prospective business of Lake Central.

(k) Except as set forth in the recitals of this Agreement, there are outstanding no options, warrants or rights to purchase from Lake Central any shares of capital stock of Lake Central, and no securities of Lake Central which are convertible into shares of capital stock of Lake Central.

(l) At the effective date of the merger, the consummation of the transactions contemplated hereby will not result in the breach of any term or provision or constitute a default under any Indenture, mortgage, deed of trust or other agreement to which Lake Central is a party, or give grounds for the termination of any material leases under which Lake Central is lessee.

(m) Lake Central will duly prepare and file with the Securities and Exchange Commission a proxy statement complying with the applicable provisions of Regulation 14 with respect to the meeting of its shareholders to be called to consider and act upon this Agreement and the plan of merger, and Lake Central shall cooperate with Allegheny in the preparation of the proxy statement which Allegheny is to prepare with respect to the meeting of its shareholders to be called to consider and act upon this Agreement and said plan of merger, and, to that end, Lake Central shall furnish Allegheny with all financial statements and other information with respect to Lake Central, its business and operations and its outstanding securities which shall be required to be included in such proxy statement. The information to be provided by Lake Central to Allegheny for use in the proxy statement so to be used by Allegheny will not contain any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or omit to state any material fact necessary to make the statements therein not false or misleading.

(n) Lake Central has not, in connection with the transactions contemplated by this Agreement, retained or otherwise utilized the services of any broker or finder.

(o) Prior to the effective date of the merger, without the prior written consent of Allegheny, Lake Central will not do any of the following except as contemplated in the letter delivered by counsel for Lake Central to Allegheny concurrently herewith: (i) make any change in its certificate of incorporation or by-laws; (ii) issue, sell or purchase, or issue rights or options to purchase or subscribe to, or make any commitment to issue, sell or purchase, any shares of its capital stock or make any other change in its capitalization other than the issuance or sale of Common Stock in accordance with the terms of its outstanding shares of Convertible Preferred Stock, its Common Stock Purchase Warrants and its Convertible Debentures or the redemption of said Convertible Preferred Stock in accordance with its terms; (iii) incur any material liabilities or obligations or incur or contract to incur any indebtedness for borrowed funds, other than in the ordinary course of business; (iv) except in the ordinary course of business, sell or otherwise dispose of any of its properties or assets, or make any loans or advances to or assume, guarantee, endorse or otherwise become liable with respect to the obligations of, any other person, firm, association or corporation; (v) declare or pay any dividends or make any other distribution of assets to its stockholders, except cash dividends payable on its Preferred Stock; (vi) enter into any material commitment or engage in any activity or transaction not in the ordinary course of business; or (vii) agree to make any commitment to take any action prohibited by the foregoing provisions of this subparagraph (o).

11.02 Allegheny represents and warrants as follows:

- (a) Allegheny has been duly incorporated and is validly existing as a corporation in good standing under the laws of the State of Delaware with full power and authority (corporate and other) to own its properties, carry on its business as now conducted and to enter into the merger contemplated hereby.
- (b) Allegheny has an authorized capitalization as set forth in the recitals of this Agreement, and all of its outstanding shares of Common Stock have been duly and validly authorized and issued and are full-paid and non-assessable.
- (c) Allegheny is a duly certificated air carrier and there has been issued to it by the Civil Aeronautics Board and there are in full force and effect certificates of public convenience and necessity which are adequate for the conduct of its business.
- (d) Allegheny is duly qualified to do business and is in good standing in each jurisdiction where the conduct of its business or the ownership or leasing of its properties requires such qualification.
- (e) Allegheny has delivered to Lake Central in connection with the execution of this Agreement (i) a statement of income for the year ended December 31, 1966 and a balance sheet at December 31, 1966, certified by Peat, Marwick, Mitchell & Co., and (ii) a statement of income for the eight months ending August 31, 1967, and a balance sheet at August 31, 1967, certified by the chief financial officer of Allegheny. Allegheny will deliver to Lake Central (i) within 45 days of the end of each month, commencing with September, 1967, a balance sheet as of the end of such month and a statement of income for such month and for the period of its fiscal year ended at the end of such month, certified by the chief financial officer of Allegheny, and (ii) on or before March 31, 1968 a statement of income for the year ended December 31, 1967 and a balance sheet at that date certified by Peat, Marwick, Mitchell & Co. All such financial statements delivered to Lake Central have been and will be prepared in accordance with generally accepted accounting principles and practices consistently applied throughout the periods indicated; they are and will be correct and complete, and fairly present, in accordance with generally accepted accounting principles and practices, consistently applied throughout the periods involved, the financial position and results of operations of Allegheny and said balance sheets will reflect all liabilities, contingent or otherwise, of Allegheny except liabilities which are not required to be so reflected in accordance with generally accepted accounting principles and practices. Such liabilities not so reflected are not, in the aggregate, material.
- (f) All tax liabilities of Allegheny have been paid in full or adequately provided for based on returns filed or have been paid or adequately provided for for the current year. Allegheny's Federal income tax returns have been examined by the Internal Revenue Service through the year ended December 31, 1962; and proposed net deficiencies of Allegheny's Federal income taxes arising from completed examinations of prior years have been paid in full or adequately provided for.
- (g) There is no claim, litigation or administrative proceeding pending or threatened (except such as may be pending before the Civil Aeronautics Board or have been disclosed by Allegheny to Lake Central in writing prior to the execution of this Agreement) which may have a material adverse effect upon or result in any material adverse change in the business, present or prospective, or the operations or properties or the condition, financial or otherwise, of Allegheny, and Allegheny will, between the date hereof and the effective date of the merger, deliver to Lake Central timely further statements as to newly instituted or threatened material claims, litigation, or administrative proceedings.
- (h) Allegheny is not a party to any contract materially and adversely affecting the business, present or prospective, or the operations or properties or the condition, financial or otherwise, of Allegheny, except such as have been disclosed by it to Lake Central in writing prior to the execution of this Agreement.

(i) Allegheny is not in default in the performance, observance or fulfillment of any of its obligations, covenants or conditions contained in any bond, debenture, note or other evidence of indebtedness or in any Indenture or Loan Agreement.

(j) Allegheny has good and marketable title to all of its properties and assets subject to no mortgage or other encumbrance except such as may have been disclosed by Allegheny to Lake Central in writing prior to the execution of this Agreement, and the properties held under leases by Allegheny are held under valid, subsisting and enforceable leases with only such exceptions as are not material and do not adversely affect the present or prospective business of Allegheny.

(k) Except as set forth in the recitals to this Agreement, there are outstanding no options, warrants or rights to purchase from Allegheny any shares of capital stock of Allegheny, and no securities of Allegheny which are convertible into shares of capital stock of Allegheny.

(l) At the effective date of the merger, the consummation of the transactions contemplated hereby will not result in the breach of any term or provisions of or constitute a default under any indenture, mortgage, deed of trust or other agreement to which Allegheny is a party.

(m) Allegheny will duly prepare and file with the Securities and Exchange Commission a proxy statement complying with the applicable provisions of Regulation 14 with respect to the meeting of its shareholders to be called to consider and act upon this Agreement and the plan of merger, and Allegheny shall cooperate with Lake Central in the preparation of the proxy statement which Lake Central is to prepare with respect to the meeting of its shareholders to be called to consider and act upon this Agreement and said plan of merger, and, to that end, Allegheny shall furnish Lake Central with all financial statements and other information with respect to Allegheny, its business and operations and its outstanding securities which shall be required to be included in such proxy statement. The information to be provided by Allegheny to Lake Central for use in the proxy statement so to be used by Lake Central will not contain any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or omit to state any material fact necessary to make the statements therein not false or misleading.

(n) Allegheny has not, in connection with the transactions contemplated by this Agreement, retained or otherwise utilized the services of any broker or finder.

(o) Prior to the effective date of the merger, without the prior written consent of Lake Central, Allegheny will not do any of the following except as contemplated in the letter delivered by Allegheny to Lake Central concurrently herewith: (i) make any change in its certificate of incorporation or by-laws; (ii) issue, sell or purchase, or issue rights or options to purchase or subscribe to, or make any commitment to issue, sell or purchase, any shares of its capital stock (other than the issuance or sale of Common Stock in accordance with the terms of its outstanding Common Stock Purchase Warrants, and stock options granted to certain key employees), or make any other changes in its capitalization; (iii) incur any indebtedness for borrowed funds, other than in the ordinary course of business; (iv) except in the ordinary course of business, make any distribution to its stockholders, except cash dividends payable on its Common Stock or (v) agree to make any commitment to take any action prohibited by the foregoing provisions of this subparagraph (o).

ARTICLE XII

FURTHER AGREEMENTS

12.01 The Constituent Corporations further agree as follows:

(a) Prior to the effective date of the merger, (i) each of the Constituent Corporations through its representatives may make such investigations of the properties and financial condition of the other

Constituent Corporation as it deems necessary or advisable to familiarize itself therewith, (ii) each of the Constituent Corporations shall have full access to the premises and to all of the books and records of the other Constituent Corporation, and (iii) the officers of each of the Constituent Corporations shall furnish such financial and operating data and other information with respect to their business and property as the other Constituent Corporation shall from time to time reasonably request, provided that no investigation pursuant to this subparagraph (a) shall affect any representations or warranties of the Constituent Corporations or the conditions to the obligations of the Constituent Corporations to consummate the merger, and provided further, in the event that the merger is not consummated, that each of the Constituent Corporations shall use its best efforts to keep confidential any information (unless readily ascertainable from public or published information or trade sources) obtained from the other Constituent Corporation concerning its properties, operations and business.

(b) Upon a termination of this Agreement as provided in Article XIV hereof, each party will pay all costs and expenses of its performance of and compliance with all agreements and conditions contained herein on its part to be performed or complied with, including fees, expenses and disbursements of its counsel.

(c) The Constituent Corporations will use all reasonable efforts to obtain the approvals, waivers and consents and to take such other actions as may be necessary or desirable to consummate the merger pursuant to this Agreement as expeditiously as possible.

(d) Any notices or other communications required or permitted hereunder shall be sufficiently given if sent by registered mail, postage prepaid, if to Allegheny at Washington National Airport, Washington, D. C. 20001, and if to Lake Central at Weir Cook Municipal Airport, Indianapolis, Indiana. Such notices or other communications shall be deemed to have been given on the date so mailed.

12.02 Allegheny agrees to use all reasonable efforts to obtain the authorization for listing upon the American, Boston, Pittsburgh and Philadelphia-Baltimore-Washington stock exchanges of the shares of Common Stock of the Surviving Corporation to be issued upon consummation of the merger.

12.03 Allegheny further agrees that on or before the effective date of the merger, the Surviving Corporation shall execute with the Trustee under the Indenture dated as of June 1, 1967, between Lake Central and Chemical Bank New York Trust Company, Trustee, relating to the 6% Senior Subordinated Debentures due 1983 of Lake Central a Supplemental Indenture satisfactory in form to the Trustee (and conforming to the Trust Indenture Act of 1939 as in force at the date of execution of the Supplemental Indenture) provided that, effective on the effective date of the merger, the Surviving Corporation expressly assumes the due and punctual payment of the principal of, premium, if any, and interest on, all of said 6% Senior Subordinated Debentures, according to their tenor, and the due and punctual performance and observance of the covenants and conditions of the aforesaid Indenture to be performed or observed by Lake Central, and making such further provisions, effective on the effective date of the merger, as may be necessary in order that all applicable provisions of said Indenture shall be complied with by the Surviving Corporation.

ARTICLE XIII CONDITIONS OF CLOSING

13.01 The obligation of Allegheny to consummate and effect the merger hereunder shall be subject to the following conditions:

(a) The representations and warranties of Lake Central herein contained shall be true as of and at the effective date of the merger with the same effect as though made at such date, and shall have been true at the date hereof, to the extent that they are not stated herein as made as of some other date; Lake Central shall have performed all obligations and complied with all covenants re-

quired hereby to be performed or to be complied with by it prior to the effective date of the merger, and shall have delivered to Allegheny a certificate, dated the effective date of the merger and signed by its President, Executive Vice President or Vice President—Finance, and its Secretary or an Assistant Secretary or its Treasurer or an Assistant Treasurer, to such effect.

(b) Except to the extent approved by Allegheny in writing, there shall have been no material adverse change in the business, property or financial condition of Lake Central (whether or not in the ordinary course of business) and no transaction not in the ordinary course of business since the date of the latest financial statements referred to in subparagraph (e) of Section 11.01 hereof, other than such changes and transactions as are contemplated by the letter from counsel for Lake Central to Allegheny referred to in Section 11.01 hereof, and Arthur Andersen & Co., independent public accountants, shall have delivered to Allegheny a letter, dated immediately prior to the effective date of the merger, in form and substance satisfactory to Allegheny, stating that on the basis of a limited review (but not an audit) of the latest available interim financial statements of Lake Central, consultations with officers of Lake Central responsible for financial and accounting matters and other specified procedures and inquiries, they have no reason to believe that during the period from September 1, 1967 to a specified date not more than five (5) days prior to the date of such letter, there was any change in the funded debt of Lake Central or any material adverse change in the financial position, net worth or results of operations of Lake Central, or if any such material adverse change has occurred, stating the nature and extent thereof and the circumstances giving rise thereto, to the extent known to said accountants.

(c) The shareholders of Allegheny and Lake Central shall have adopted this Agreement of Merger at the meetings referred to in Section 9.01 hereof, by the votes required for such adoption.

(d) Lake Central shall have secured such consents or waivers, if any, as may be required under the provisions of any of its notes, indentures, loan agreements, leases or other agreements, which will remain in effect immediately after the effective date of the merger or as may be required to avoid a default by the Surviving Corporation under such provisions at the effective date of the merger or immediately thereafter.

(e) The merger shall have been approved to the extent required by Section 408 and other applicable provisions of the Federal Aviation Act of 1958, without any conditions which would adversely and materially affect the Surviving Corporation, and the certificates of public convenience and necessity of Lake Central shall have been transferred to Allegheny pursuant to Section 401(h) of the Federal Aviation Act of 1958 without any material adverse change in the nature or scope of the services authorized thereby. It is understood that reasonable labor protective provisions of the character and extent previously prescribed by the Civil Aeronautics Board in similar situations shall not be deemed to be conditions which would adversely and materially affect the Surviving Corporation.

(f) Any and all consents, approvals, authorizations, orders, permits, licenses or qualifications, from any court or any regulatory authority or other governmental body of any state having jurisdiction over the Constituent Corporations, required for the consummation of the merger as contemplated hereby, shall have been obtained, and no such consent, approval, authorization, order, permit, license or qualification shall contain any condition or provision which, in the judgment of Allegheny, shall be unduly burdensome to the Surviving Corporation.

(g) Allegheny shall have received from each shareholder of Lake Central which Allegheny designates to Lake Central not less than ten (10) days prior to the effective date of the merger, an agreement, satisfactory in form and substance to Allegheny's counsel, Messrs. Hale Russell & Stentzel, that such shareholder is acquiring the shares of Common Stock of the Surviving Corporation to be received by such shareholder upon consummation of the merger for the purpose of investment and with no present intention of selling, offering or distributing such shares, and

that such shareholder will make no disposition of any of such shares under circumstances which would require the registration of any of such shares under the Securities Act of 1933, as amended, provided that no agreement shall be required to be delivered pursuant to this subparagraph (g) by any shareholder of Lake Central as to whom Messrs. Jacobs Persinger & Parker, counsel for Lake Central, shall have delivered to Allegheny an opinion, in form and substance satisfactory to Allegheny's counsel, Messrs. Hale Russell & Stentzel, to the effect that such shareholder is not an "affiliate" of Lake Central as such term is defined in Rule 133 under the Securities Act of 1933.

(h) Allegheny shall have received from Messrs. Jacobs Persinger & Parker, counsel for Lake Central, a favorable opinion dated immediately prior to the effective date of the merger, in form and substance satisfactory to Allegheny's counsel, Messrs. Hale Russell & Stentzel, to the effect that (i) Lake Central is a corporation duly organized and validly existing and in good standing under the laws of the State of Delaware; (ii) Lake Central is duly qualified as a foreign corporation and in good standing in each jurisdiction in which such qualification is necessary; (iii) Lake Central has the corporate power, and all licenses and permits required to carry on its business as now being conducted; (iv) the authorized capital stock of Lake Central consists of 35,741 shares of Convertible Preferred Stock, par value \$20.00 per share, and 3,000,000 shares of Common Stock, par value \$1.00 per share, and stating the number of such shares which have been issued and that such shares have been duly and validly authorized and issued and are full-paid and non-assessable; (v) this Agreement has been duly executed and delivered by Lake Central and is the valid and binding obligation of Lake Central, and all corporate action by Lake Central required in order to authorize the merger has been taken, and neither the execution and delivery of this Agreement nor the consummation of the merger will violate the certificate of incorporation or by-laws of Lake Central, or, to the best of the knowledge, information and belief of such counsel, and except as may have been disclosed by Lake Central to Allegheny in writing prior to the execution hereof, Lake Central is not engaged in or threatened with any legal action or other proceeding, or has not incurred or been charged with any presently pending violation of any Federal, state or local law or administrative regulation, which would materially adversely affect or impair its financial condition, business, operations, prospects, properties or assets; (vi) the merger will not result in taxable gain or loss to Allegheny, Lake Central or their stockholders except with respect to payments resulting from the exercise of dissenters' appraisal rights or the sale of fractional interests, provided that in rendering such opinion counsel shall be entitled to rely upon a ruling from the Internal Revenue Service if a ruling to the foregoing effect is obtained; and (vii) as to such other matters incident to the matters herein contemplated as Allegheny and its counsel may reasonably request, including the form of all papers and the validity of all proceedings. In addition, Lake Central shall have delivered to Allegheny, if Allegheny shall have so requested (i) an opinion of special counsel to Lake Central in form and substance satisfactory to Allegheny's counsel, Messrs. Hale Russell & Stentzel, from such Indiana counsel as Allegheny may designate, to the effect that any claim asserted or which might be asserted by General Motors Corporation against Lake Central based upon Lake Central's failure to provide insurance coverage naming General Motors as an insured pursuant to a Security Agreement dated July 22, 1966 will result in no liability to the Surviving Corporation other than an amount equal to premiums paid for insurance coverage obtained by General Motors Corporation, plus interest thereon at the rate of 6 1/4% per annum; (ii) an opinion of counsel, in form and substance satisfactory to Allegheny's counsel, Messrs. Hale Russell & Stentzel, to the effect that subject to changes permitted by Section 13.01(e), all Certificates of Public Convenience and Necessity, whether issued by Federal or State authority, presently owned by Lake Central will, upon the effective date of the merger, be owned by Allegheny; and (iii) certificates of the appropriate authorities of the jurisdiction of incorporation of Lake Central and of each jurisdiction in which Lake Central is qualified to do business as a foreign corporation that Lake Central is in good standing and has paid all such taxes as are shown to be due and payable by Lake Central in such jurisdictions. In rendering the opinion required by clause (ii) above, Lake Central's counsel may rely upon the opinion of Albert F. Grisard, Esq., special counsel to Lake Central, in matters relating to the Federal Aviation Act.

(i) The Civil Aeronautics Board and Allegheny's independent public accountants, Messrs. Peat, Marwick, Mitchell & Co., shall have acquiesced in the accounting treatment set forth in Article X as being in accord with the applicable rules, regulations and requirements of said Board and in accord with generally accepted accounting principles.

(j) The agreement dated May 3, 1966, as amended, between Lake Central and The Boeing Company shall have been terminated without expense to or liability on the part of Lake Central and evidence thereof shall have been furnished to Allegheny.

(k) All of the Nord aircraft owned by Lake Central shall be in airworthy condition and possess valid and subsisting Certificates of Airworthiness; and between the date of execution of this Agreement and the effective date of the merger, none of such aircraft shall have become subject to any Federal Aviation Agency order, rule or regulation or any manufacturer's instruction or recommendation which, if complied with by Lake Central, would result in a material adverse change in the configuration, range, pay-load, direct operating costs or other operating characteristics of such aircraft.

(l) No temporary Certificate of Public Convenience and Necessity issued by the Civil Aeronautics Board to Lake Central and in effect on the date of execution of this Agreement shall have been modified in a manner materially adverse to Lake Central or suspended or withdrawn, nor shall any order have been issued seeking suspension or termination of, or establishing an investigation with respect to, any such temporary certification, between the date of execution hereof and the effective date of the merger.

(m) Allegheny shall have received from Perry R. Bass and each of his "associates" (as such term is defined in Rule 405 under the Securities Act of 1933) an agreement satisfactory in form and substance to Allegheny's counsel, Messrs. Hale Russell & Stentzel, that in no event will any of them dispose of more than twenty-five per cent (25%) of the shares of Common Stock of the Surviving Corporation into which their shares of Preferred or Common Stock of Lake Central have been converted pursuant to Article VI hereof for a period of eighteen months commencing with the effective date of the merger without the prior written consent of the Surviving Corporation.

13.02 The obligation of Lake Central to consummate and effect the merger hereunder shall be subject to the following conditions:

(a) The representations and warranties of Allegheny herein contained shall be true as of and at the effective date of the merger with the same effect as though made at such date, and shall have been true at the date hereof, to the extent that they are not stated herein as made as of some other date; Allegheny shall have performed all obligations and complied with all covenants required hereby to be performed or to be complied with by it prior to the effective date of the merger, and shall have delivered to Lake Central a certificate, dated the effective date of the merger and signed by its President or Senior Vice President—Finance & Administration, and its Secretary or an Assistant Secretary or its Treasurer or an Assistant Treasurer, to such effect.

(b) Except to the extent approved by Lake Central in writing there shall have been (i) no material adverse change in the business, property or financial condition of Allegheny (whether or not incurred in the ordinary course of business) and (ii) no transaction not in the ordinary course of its business since the date of the latest financial statements referred to in subparagraph (e) of Section 11.02 hereof, other than such changes and transactions as are contemplated by the letter from Lake Central to Allegheny referred to in Section 11.02 hereof, and Peat, Marwick, Mitchell & Co., independent public accountants, shall have delivered to Lake Central a letter, dated immediately prior to the effective date of the merger, in form and substance satisfactory to Lake Central, stating that on the basis of a limited review (but not an audit) of the latest available interim financial statements of Allegheny, consultations with officers of Allegheny responsible for financial and accounting matters and other specified procedures and inquiries, they have no reason to believe that during the period from September 1, 1967 to a specified date not more than five (5) days prior to the

date of such letter, there was any change in the funded debt of Allegheny or any material adverse change in the financial position, net worth or results of operations of Allegheny, or if any such material adverse change has occurred, stating the nature and extent thereof and the circumstances giving rise thereto, to the extent known to said accountants.

(c) The shareholders of Allegheny and Lake Central shall have adopted this Agreement of Merger at the meetings referred to in Section 9.01 hereof, by the votes required for such adoption.

(d) Allegheny shall have secured such consents or waivers, if any, as may be required under the provisions of any of its notes, indentures, loan agreements, leases or other agreements, which will remain in effect immediately after the effective date of the merger or as may be required to avoid a default by the Surviving Corporation under such provisions at the effective date of the merger or immediately thereafter.

(e) The merger shall have been approved to the extent required by Section 408 and other applicable provisions of the Federal Aviation Act of 1958, without any conditions which would adversely and materially affect the Surviving Corporation, and the certificates of public convenience and necessity of Lake Central shall have been transferred to Allegheny pursuant to Section 401(h) of the Federal Aviation Act of 1958 without any material adverse change in the nature or scope of the services authorized thereby. It is understood that reasonable labor protective provisions of the character and extent previously prescribed by the Civil Aeronautics Board in similar situations shall not be deemed to be conditions which would adversely and materially affect the Surviving Corporation.

(f) Any and all consents, approvals, authorizations, orders, permits, licenses or qualifications from any court or any regulatory authority or other governmental body or any state having jurisdiction over the Constituent Corporations, required for the consummation of the merger as contemplated hereby, shall have been obtained, and no such consent, approval, authorization, order, permit, license or qualification shall contain any condition or provisions which, in the judgment of Lake Central, shall be unduly burdensome to the Surviving Corporation.

(g) The American Stock Exchange shall have approved, subject to official notice of issuance, the listing of the shares of Common Stock to be issued pursuant to the merger.

(h) Lake Central shall have received from Messrs. Hale Russell & Stentzel, counsel for Allegheny, a favorable opinion, dated immediately prior to the effective date of the merger, in form and substance satisfactory to Lake Central's counsel, Messrs. Jacobs Persinger & Parker, to the effect that: (i) Allegheny is a corporation duly organized and validly existing and in good standing under the laws of the State of Delaware; (ii) the authorized capital stock of Allegheny consists of 5,000,000 shares of Common Stock, par value \$1.00 per share, and stating the number of such shares which have been issued and that such shares have been duly and validly authorized and issued and are full-paid and non-assessable; (iii) all shares of Common Stock of the Surviving Corporation into which the Lake Central Common Stock is to be converted at the effective date of the merger will be, immediately after such effective date, duly and validly authorized and issued and full-paid and non-assessable; (iv) this Agreement has been duly executed and delivered by Allegheny and is the valid and binding obligation of Allegheny, and all corporate action by Allegheny required in order to authorize the merger has been taken, and neither the execution and delivery of this Agreement nor the consummation of the merger will violate the certificate of incorporation or by-laws of Allegheny or, to the best of the knowledge, information and belief of such counsel, any material contract, agreement, understanding, lease or plan to which Allegheny is a party or result in a default under, or cause any acceleration of maturity of, any obligation or loan to which Allegheny is a party or violate any law, order or decree; (v) to the best of the knowledge, information and belief of such counsel, Allegheny is not engaged in or threatened with any legal action or other proceeding, and has not incurred or been charged with any presently pending violation of any Federal, state or local law or administrative

regulation, which would materially adversely affect or impair the financial condition, business, operations, prospects, properties or assets of Allegheny; (vi) Allegheny is duly qualified as a foreign corporation and in good standing in each jurisdiction in which such qualification is necessary; (vii) Allegheny has the corporate power, and all licenses and permits required to carry on its business as now being conducted; (viii) the merger will not result in taxable gain or loss to Allegheny, Lake Central or their stockholders except with respect to payments resulting from the exercise of dissenters' appraisal rights or the sale of fractional interest, provided that in rendering such opinion counsel shall be entitled to rely upon a ruling from the Internal Revenue Service if a ruling to the foregoing effect is obtained; and (ix) as to such other matters incident to the matters herein contemplated as Lake Central and its counsel may reasonably request, including the form of all papers and the validity of all proceedings.

ARTICLE XIV

ABANDONMENT OF MERGER

14.01 Anything herein to the contrary notwithstanding, this Agreement may be terminated and the merger abandoned at any time prior to the effective date of the merger, whether before or after submission to or approval by the stockholders of the Constituent Corporations, only as follows:

(a) By mutual agreement of the Boards of Directors of the Constituent Corporations.

(b) At the election of the Board of Directors of Allegheny in the event that any of the conditions precedent set forth in Section 13.01 hereof becomes impossible to fulfill or that by June 30, 1968 all of said conditions precedent have not been met.

(c) At the election of the Board of Directors of Lake Central in the event that any of the conditions precedent set forth in Section 13.02 hereof becomes impossible to fulfill or that by June 30, 1968 all of said conditions precedent have not been met.

(d) At the election of the Board of Directors of Allegheny, if, in the opinion of that Board the merger is impracticable or inadvisable by reason of the potential liability of the Surviving Corporation arising out of written objections filed by shareholders to the merger and demands by such shareholders for payment for their shares by the Surviving Corporation pursuant to Section 262 of the Delaware General Corporation Law.

14.02 In the event of the termination of this Agreement and abandonment of the merger pursuant to Section 14.01 hereof, this Agreement shall become void and have no effect and all further obligations of Allegheny and of Lake Central hereunder shall terminate without any liability on the part of either of the Constituent Corporations, except for the obligations of the Constituent Corporations under Section 12.01 (a) and (b) hereof, and except for breaches of warranties set forth in Article XI hereof and then only to the extent of the expenses reasonably incurred by the other Constituent Corporation in connection with the proposed merger.

14.03 Any of the terms or conditions of this Agreement may be waived at any time by the Constituent Corporation which is, or whose stockholders are, entitled to the benefit thereof, whether before or after the approval of this Agreement on behalf of the stockholders of the Constituent Corporations, or either of them.

ARTICLE XV

AMENDMENT OF THE AGREEMENT

15.01 Subject to applicable law, this Agreement may be amended upon authorization by the Boards of Directors of the Constituent Corporations before or after the approval of this Agreement by the stockholders of the Constituent Corporations at any time prior to the effective date of the merger with respect to any of the terms contained herein except the manner of converting shares provided for in Article VI hereof.

ARTICLE XVI
MISCELLANEOUS

16.01 Descriptive headings of this Agreement are for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement.

16.02 This Agreement may be executed in any number of counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties hereto and delivered to the other party hereto.

16.03 This Agreement shall be construed under and in accordance with the laws of the State of Delaware.

IN WITNESS WHEREOF, the corporate parties hereto, pursuant to authority given by their respective Boards of Directors, have caused this Agreement of Merger to be entered into and signed by their respective directors, or a majority of them, and their corporate seals to be hereunto affixed, and to be attested by their respective Secretaries or Assistant Secretaries, all as of the date and year first above written.

ALLEGHENY AIRLINES, INC.

By HENRY A. SATTERWHITE
*Chairman of the Board of Directors
 and Director*

LESLIE O. BARNES
President and Director

HARRY W. BESSE
Director

GILBERT T. BOWMAN
Director

ROBERT F. GEORGE
Director

R. H. GEORGE
Director

HENRY R. HALLOWELL
Director

ROBERT M. LOVE
Director

PHILIP V. MATTES
Director

WALTER J. SHORT
*Senior Vice President—Finance and
 Administration and Director*

COROCORAN THOM, JR.
Director

Attest:

LAWRENCE L. STENTZEL
Secretary

Being a majority of the Board of Directors of
ALLEGHENY AIRLINES, INC.

[CORPORATE SEAL]

347

JA-73

LAKE CENTRAL AIRLINES, INC.

By L. THOMAS FERGUSON
President and Director

S. R. SUTPHIN
Director

NELSON S. MEAD
Director

R. B. STEWART
Director

ROY L. WHISTLER
Director

M. M. ERSELCUK
Director

JEROME C. EPPLER
Director

ROBERT LeBUHN
*Chairman of the Board of Directors
and Director*

Being a majority of the Board of Directors of
LAKE CENTRAL AIRLINES, INC.

Attest:

MARSHALL A. JACOBS
Assistant Secretary

[CORPORATE SEAL]

NET CHANGES IN OPERATING EXPENSES DUE TO MERGER
 (Information Response Item A.20)

Description	MERGED COMPANY					
	Merger Expense		1st 12 Months		Normal Yearly	
	Total	Amortization	Decrease	Increase	Decrease	Increase
I. <u>Equipment and Facilities</u>						
<u>Reduction of Rent at Common Station location</u>	Note 14		7,560		7,560	
Reduction of Rent at General Offices	Note 15		48,348		64,464	
Reduction of Rent at Common Maintenance Location	Note 16				1,656	
<u>Other Supplies</u>	Note 17		12,000		12,000	
<u>Other Rentals</u>	Note 18					
O. <u>Personnel Salaries & Expenses not reflected elsewhere</u>						
<u>Aircraft Handling Personnel</u>	Note 19	43,740		47,715		
<u>Traffic Handling Personnel</u>	Note 20	132,305		144,328		
<u>Adjustment of Wage Differentials</u>	Note 21					
Stations Personnel		86,188		86,188		
Reservations Personnel		16,770		16,770		
Hourly Rated Maintenance Personnel		156,570		156,570		
Dispatch Personnel		7,700		7,700		
Pilots		157,320		157,320		
		<u>424,548</u>		<u>424,548</u>		
Extension of Allegheny's Hospitalization and Group Insurance Benefits to Lake Central Personnel	Note 22	188,275		191,940		
Pension Plan Costs	Note 23	18,878		18,878		

Docket 19151

Joint Exhibit No. 264 (Rev.)
 Page 3 of 5

JA-74

440

ALLEGHENY AIRLINES, INC.

ALLEGHENY AIRLINES, INC.NET CHANGES IN OPERATING EXPENSES DUE TO MERGER
(Information Response Item A.20)Note 20 - Traffic Handling Personnel

Estimated reductions in personnel requirements at the common stations are as follows:

<u>Station</u>	<u>AL</u>	<u>LC</u>	<u>Total</u>	<u>Agents Required</u>	<u>Agents Not To Be Replaced Upon Turnover</u>
Baltimore	14	6	20	19	1
Buffalo	-	5	5	5	-
Cleveland	15	14	29	27	2
Washington	66	16	82	76	6
Detroit	13	25	38	36	2
Erie	19	6	25	24	1
Wheeling	-	4	4	4	-
Pittsburgh	78	20	98	91	7
Parkersburg	6	5	11	9	2
	<u>211</u>	<u>101</u>	<u>312</u>	<u>291</u>	<u>21</u>
	<u>21 X \$6,120 -</u>			<u>\$128,520</u>	
	<u>Cash Fringe Costs @ 12.3%</u>			<u>15,808</u>	
				<u><u>\$144,328</u></u>	

It is anticipated that there will be a one month time lag in effecting the turnover in the first year of the merger, reducing the savings to \$132,305 in the first year.

Note 21 - Adjustments to Wage Differentials

A review of the wage scales for all personnel of Lake Central and Allegheny other than management indicates that there is a differential of \$424,548 on an annual basis. Rates under existing contracts and prevailing non-contract scales were examined in detail (the number of employees in the particular scale) to obtain the amounts shown as wage differentials by the employee groups. The company expects to pay employees under the scales shown as of the date of the merger to eliminate discrimination between employees doing similar jobs.

Note 22 - Hospitalization and Group Insurance

The Allegheny hospitalization and group insurance program includes a company contribution, whereas the Lake

Docket 19151

Joint Exhibit No. 282
Page 1 of 1ALLEGHENY AIRLINES, INC.LABOR PROTECTIVE PROVISIONS
(Information Response BOR Item A.24
And ALDA Request)

As the surviving corporation, all Allegheny outstanding labor agreements will be applicable to the appropriate categories of employees, i.e., pilots, flight attendants and mechanics.^{1/} In addition, all non-organized groups will benefit by Allegheny's higher pay scales. As a result, a large number of Lake Central employees will benefit by receiving higher rates of pay and improved fringe benefits than are now being received. The estimated cost of this equalization is shown on Joint Exhibit No. 264.

The applicants will accept imposition of the labor protective provisions adopted in the United-Capital Merger Case. To the extent such provision will produce cost changes, and can now be identified, they are reflected in Joint Exhibit No. 264. In this connection, the dispatch function will be consolidated at Pittsburgh, and Lake Central dispatch personnel will accordingly be covered by the applicable labor protective provisions.

1/ All Lake Central labor agreements will become inapplicable as of the effective date of the merger.



JA-77

434

Air Line Dispatchers Association

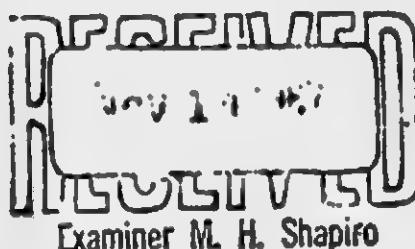
AFL-CIO

243 W. MAPLE AVENUE
VIENNA, VIRGINIA 22180

(703) 938-2160
(703) 938-2161

December 13, 1967

CIVIL AERONAUTICS BOARD



Mr. Milton H. Shapiro, Hearing Examiner
Civil Aeronautics Board
Universal Building
Washington, D. C.

Re: Allegheny-Lake Central Merger
Docket No. 19151

Dear Mr. Shapiro:

Initially ALDA did not oppose the proposed merger assuming appropriate Labor Protective Provisions are imposed.

On November 30th, Allegheny Airlines suggested that as of the effective date of the merger the collective bargaining agreement between Lake Central Airlines and ALDA would cease to exist.

Such a suggestion is contrary to the decisions of appropriate federal courts. If the merged carrier persists in its contentions, ALDA must of necessity oppose the merger inasmuch as the merged carrier has indicated a willingness to blatantly disregard contractual obligations.

Very truly yours,

Robert E. Commerce

Robert E. Commerce
President
Air Line Dispatchers Association
AFL-CIO

REC:jj

cc: J. A. Sickles
Attorney, ALDA
All parties

8
AIR LINE DISPATCHERS ASSOCIATION
243 West Maple Avenue
Vienna, Virginia
22180

485
CIVIL AERONAUTICS BOARD
REASONABLE
EXAMINER
Examiner M. H. Shapiro

November 28, 1967

ALDA-1

MERGER AGREEMENT

LAKE CENTRAL - ALLEGHENY AIRLINES

DOCKET 19151

DIRECT EXHIBITS AND WRITTEN TESTIMONY

OF

AIR LINE DISPATCHERS ASSOCIATION

AFL-CIO

The Air Line Dispatchers Association is a labor organization as defined in Federal statutes and is the duly recognized bargaining agent, as referred to in the Railway Labor Act, for the class and craft of aircraft dispatchers on Lake Central Airlines, Inc. and is an Intervenor in this application.

ALDA submits that the merger application, if approved, can only be consistent with the public interest if there are imposed proper conditions, reasonably calculated to protect the employees of the carrier.

ALDA contends that the Labor Protective Provisions imposed in the United-Capital merger are appropriate and satisfactory if specifically altered as follows:

1. Add to Section 1 a proviso that in any dispute between the "carrier" and an "employee" or his representative, in which the carrier asserts that a change in employment status is not solely due to and resulting from the merger, the carrier shall assume the burden of so proving.

The burden of proof should rest upon the carrier that a rearrangement of forces or reduction in force is not as a result of the merger, rather than forcing the intervening union party to prove same. Classified and confidential records are maintained by management regarding personnel requirements, and consolidation of offices, which are not available to the union party, and these plans can be in the making for many months in advance of the merger and for some time thereafter. We urge the Board to shift the burden of proof in the provisions of Section 1 of Labor Protective Provisions.

2. Amend Section 4(d), 8(a) and 9(c) by increasing the Claim Period to "four" years from the effective date of the merger.

Three years for a claim period is insufficient for the full effect of an amalgamation to be felt, particularly one of this magnitude. Experience gained in the United-Capital merger, which was the bellwether proceeding for current labor protective provisions, shows that long range management plans for consolidation and retrenchment do not necessarily take place within three years. For example, the United organization had eight flight dispatch bases immediately following the merger. Prior to the merger, United had not indicated any intention of reducing its bases for the future. Yet today there are only three dispatch bases, aligned as to cover a much larger geographical area and substantially revised route structure. The largest consolidation did not occur until more than four years after merger approval. The Association's appeal for an increase in only one year, to a total of four years, is not an unreasonable one, when one considers the route structures and corporate locations of the two airlines involved herein. Such an increase would also affect (5-c) (8-a) and (9-c), in Labor Protective Provisions.

3. Amend Section 6 by deleting the words "such as hospitalization, relief, and the like." and substituting "The surviving carrier shall be required to assume the obligations of all outstanding collective bargaining agreements in effect on Lake Central Airlines and Allegheny Airlines and to continue such agreements until they are terminated or changed in accordance with the provisions of the Railway Labor Act or renegotiated by agreements between the parties.

The language submitted by the Association, we believe is far more practical and specific. Moreover, it reflects the correct legal approach to the applicable Act.

4. Amend Section 8(a) by deleting the parenthetical phrase "(not to exceed two working days)" and substituting therefore "(two days, or the amount of time specified by the employee's applicable collective bargaining agreement)".

The reason for this submission is that in general the labor agreements dealing with moves and transfers affecting employees of air carriers are more liberal than the Board's provisions and therefore we propose that the bottom limit may well be the two days suggested by the Board but not limited to the two days, but rather to the contractual limitations if better.

5. Amend Section 13, by deleting the words "to an arbitration committee for consideration and determination, the formation of which committee, its duties, procedures, expenses, et cetera, shall be agreed upon by the carrier and the employees, or the duly authorized representatives of the employees." and substituting therefore: "to a Neutral Arbitrator for final and binding determination. In the event the parties cannot agree upon a Neutral Arbitrator within forty (40) days after the controversy arises, either party may petition the National Mediation Board for appointment of a Neutral Arbitrator."

The Association's proposal employs more exacting language and properly reflects the means by which disputes are resolved; and it provides for breaking deadlocks on the selection of arbitrators.

6. ALDA proposes that the Board clarify Section 9(a) 1 of the UAL-CAP Labor Protective Provisions, dealing with the sale of a home, wherein the Board refers to "if the home is not sold within a substantial period of time after the merger." (Emphasis added).

Experience has shown that base relocations often result in substantial financial losses in the sale of property, and the cost of new property. The issue cuts two ways, not only in loss through sale, but in moving to higher cost areas, where the Board cannot be expected to furnish protection. Depressed real estate markets caused substantial losses to Bonanza Airlines dispatch personnel when the Company's base of operation was moved to Phoenix. FAA personnel suffered similar losses in phasing out of Miami area Flight Standards positions. United personnel found a net loss in the transfer from Seattle to San Francisco in 1966. The Association recognizes that the inability to dispose of housing can result in family disruption and an undesirable side-effect of "commuting". All that is asked is that the Board define, with reasonableness, what is meant by "substantial."

7. Sections 4(a) and 6 of the UAL-CAP Labor Protective Provisions would appear to provide protection to employees in that they shall not be placed in a worse position, economically, or benefit-wise, than they were prior to the merger. ALDA proposes that the Board establish, as a condition of merger, that a timetable be established for the parties involved, the union as well as the Company, to meet and execute an agreement in order that inequities will not result which cause dissension and disruption.

In support of ALDA's position, we wish to remind the Board that ALDA has been involved in seven mergers this year, and several other mergers during the past 14 years in which we intervened in behalf of the employees whom we represented as bargaining agent. Our experience, then, surpasses that of the merger applicants in this case, and we have had ample opportunity to observe that there are places where the alleged protection for employees fails to cover the situation adequately. We have interest in three areas: (a) plugging the holes in the Labor Protective Provisions; (b) safeguarding the collective bargaining rights of affected employees and (c) finding means of bringing the carriers involved to the bargaining table within reasonable time limits. With respect to (a) we have given our supporting arguments for the changes and will stand ready to testify if needed. As to (b) we cannot know what may be encountered until the surviving carrier reveals its plans and responds to our information requests, and those of the Bureau Counsel. As to (c), our Association has attempted on more than one occasion to portray for the Board the incongruities that develop in collective bargaining matters that follow a merger, not only in cases where the same union is involved with both groups, but where different unions are involved.

The Board recognizes the disrupting aspects that collective bargaining problems create for an efficient and orderly system of transportation, and it has reemphasized its interest by calling for a public hearing on the extension of the Airlines Mutual Aid Pact. It would seem to follow, then, that the potentially disruptive aspects of labor difficulties related to a merger would be of equal concern to the Board, and that more affirmative control is in order.

Respectfully submitted,



ROBERT E. COMMERCE

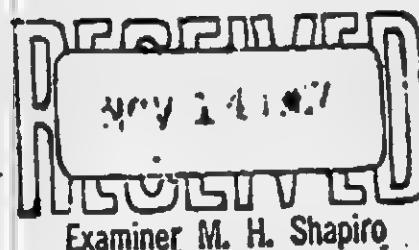
PRESIDENT

AIR LINE DISPATCHERS ASSOCIATION

JA-82

BEFORE THE
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

490
CIVIL AERONAUTICS BOARD



Application of :

ALLEGHENY AIRLINES, INC. :

and :

LAKE CENTRAL AIRLINES, INC. :

Docket No. 19151

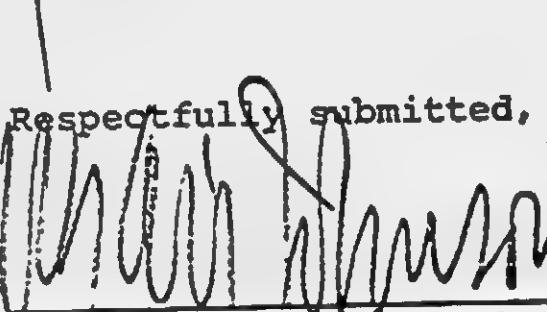
under Sections 408 and 401 of the:
Federal Aviation Act of 1958 for
approval of the merger of Lake :
Central Airlines, Inc., into
Allegheny Airlines, Inc., and :
for transfer of Lake Central's
Certificate of Public Convenience:
and Necessity for Route 88 to
Allegheny. :

STATEMENT AND WRITTEN TESTIMONY OF
AIR LINE EMPLOYEES ASSOCIATION, INTERNATIONAL

Air Line Employees Association, International, hereinafter
referred to as "ALEA", is the duly designated collective bargaining
representative under the terms and provisions of the Railway Labor
Act of the fleet and passenger service employees in the service of
Lake Central Airlines, Inc. ALEA hereby files as its direct

exhibit and testimony in this proceeding the written testimony of Victor J. Herbert. The said written testimony sets forth the position of ALEA with respect to the proposed merger of Lake Central and Allegheny and the labor protective provisions which should be applied therein.

Respectfully submitted,



WYATT JOHNSON, General Counsel
Air Line Employees Association,
International
Suite 509, 100 Biscayne Tower
Miami, Florida 33132

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Statement have been served this 12th day of December, 1967, by first class mail, postage prepaid, upon the following:

Mr. Charles H. Ruby, President
Air Line Pilots Association, Int'l.
55th Street and Cicero Avenue
Chicago, Illinois 60638

Mr. Allen E. Gramza, Director
Legal Department
Air Line Pilots Association, Int'l.
55th Street and Cicero Avenue
Chicago, Illinois 60638

Mr. Milton H. Shapiro, Hearing Examiner
Civil Aeronautics Board
Washington, D. C.

Mr. Edwin I. Colodny, Allegheny Airlines
National Airport
Washington, D.C.

Mr. Albert F. Grisard
412 Metropolitan Bank Bldg.
Washington, D. C.

Robert E. Commerce
243 West Maple Avenue
Vienna, Virginia

Mr. Alfred V.J. Prather
1707 L Street, N.W.
Washington, D. C.

William J. Hickey
620 Tower Building
Washington, D. C.

Robert N. Duggan
710 Ring Building
Washington, D. C.

George N. Kenyon, Jr.
Civil Aeronautics Board
Washington, D. C.

Joseph Paul
One Farragut Square South
Washington, D. C.

Herbert S. Thatcher and
Donald M. Murtha
1009 Tower Building
Washington, D. C. 20005

Wyatt Johnson

TESTIMONY OF VICTOR J. HERBERT

My name is Victor J. Herbert. I am President of Air Line Employees Association, International. My office address is 5600 South Central Avenue, Chicago, Illinois.

Air Line Employees Association, International has intervened in the proposed merger of Allegheny and Lake Central on the basis of its representation of the fleet and passenger service employees in the service of Lake Central. As set forth in ALEA's Petition to Intervene, it has a currently existing collective bargaining agreement with Lake Central for the employees represented by it (ALEA).

During the past year ALEA has participated as an intervenor in the following merger cases: Eastern-Mackey; Western-Pacific Northern; Frontier-Central; West Coast-Pacific-Bonanza; Airlift-Slick.

In none of these cases has ALEA opposed the subject merger. Rather, ALEA has sought protection for the various employees represented by it on the carriers involved in the merger. However, it has been my experience that the labor protective provisions of the United-Capital merger case have not been entirely adequate in most of these cases. In the West Coast-Pacific-Bonanza merger case ALEA, in its Statement of Issues of Fact or Law, stated as follows:

"3. The situation described in Paragraph 2 hereinabove is one that has arisen in several recent merger proceedings. For example, ALEA represented employees of Pacific Northern in the Western and Pacific Northern Merger. Subsequently ALEA found itself involved in considerable difficulty with four

other unions all representing comparable or similar classifications of employees, all hoping to represent such employees on the merged carrier. Despite efforts of both the Civil Aeronautics Board and the National Mediation Board the problems at Western-Pacific Northern are still unresolved.

"Since the United-Capital Merger the CAB has routinely included standard labor protective provisions in its orders approving mergers. The general effect of these labor protective provisions is to safeguard affected employees against loss of income. With respect to the myriad of other problems which can and do arise out of a merger, the CAB's position is that the carrier must settle such problems in negotiations with the collective bargaining representatives or that the collective bargaining representatives must first negotiate between themselves and thereafter negotiate with the carrier. It is respectfully submitted that this system has not functioned efficiently in mergers where more than one union represents the same class and craft of employees. It is unrealistic and impractical to expect negotiations between competing unions where the only solution lies in one or the other unions giving up its group of employees to its rival union."

The "standard" labor protective provisions in general safeguard affected employees against loss of income. As to other problems occasioned by a merger the collective bargaining representative is expected by the Civil Aeronautics Board to settle such problems in negotiations with the carrier.

In the subject merger the ALEA contract is in effect until February 1, 1970, and covers approximately 425 employees. Allegheny employs approximately 1100 to 1200 employees in the entire class and craft of clerical, office, fleet and passenger service employees. This craft and class is unorganized on Allegheny and on the merged carrier the unorganized employees will outnumber the ALEA represented employees by approximately 2½ to 1.

Allegheny historically has given each year to its employees raises and fringe benefits to bring such employees' compensation up to those of organized groups. In my

opinion the purpose of this has been to keep Allegheny's unorganized group in status quo.

At the present time the wage scales of the prospective groups of employees in the same class and craft on Lake Central and Allegheny are comparable.

In my letter of September 13, 1967, to all Allegheny Airlines' Clerical, Office, Fleet and Passenger Service Employees, I stated as follows:

"I have just had an opportunity to read the letter dated September 1st to you from Mr. N. B. Fry, Executive Vice President and General Manager, Allegheny Airlines.

"While I agree with many of the statements made by Mr. Fry in his letter, there are several points which, I believe, deserve further comment.

"I cannot accept Mr. Fry's statement that the main purpose of union organizing efforts 'is to add you to their membership as a dues-paying member.' This is not what ALEA believes... and this is not the way ALEA operates - or the way any honest, ethical labor union operates! If this were the case, labor unions would have withered and died many, many years ago.

Re: letter
"I noted with particular interest that section of Mr. Fry's letter in which he indicated that Allegheny has followed the industry pattern for regional carriers as a basis for establishing your salary levels and fringe benefits. On this point, the record is very clear - Allegheny has followed, as necessary, established industry standards. But, who set the standards, and how were they set?

"These accepted industry standards have been, in the great majority of cases, developed as the result of contracts negotiated for ALEA members by ALEA negotiating teams. In terms of today's established standards, your Allegheny salary scales appear to be in line - but, let me point out that definite salary increases for both 1968 and 1969 are already spelled out in contracts negotiated for ALEA members earlier this year. There is no guarantee that Allegheny will continue to follow industry standards as they are continually improved by ALEA negotiators, or that Allegheny will provide the additional benefits after ALEA has won them for other employee groups.

"ALEA, as the spokesman for passenger service and clerical employees in the air line industry, is extremely proud of the wages and fringe benefits it has obtained for its membership. As the only labor union devoted exclusively to serving the needs of passenger service and clerical employees in the air line industry, ALEA is equally proud of its reputation, and the professional ability of its staff. We are proud to be recognized in the industry as a union which deals in a firm but fair manner in the handling of all its affairs. Our record in the air line industry is quite clear and the settlements we have made in the past year speak for themselves.

"One thing Mr. Fry completely failed to mention in his letter was employee 'representation.' Who serves as a spokesman for employees when they are in trouble or unjustly fired or disciplined? Who can work with company management to improve working conditions? Who stands ready to advise and assist individual employees in filing grievances? And, who will fight for employee rights when necessary? ALEA was founded to provide that representation and protection for its membership, and to provide the very best assistance is the main reason why ALEA limits itself to serving only those in the clerical, office, fleet and passenger service employee groups.

"Everyone is represented by someone in our American society; doctors, dentists, lawyers, government employees and, last but not least, companies, through their various trade associations. Even Allegheny Airlines is a member of a union - the Air Transport Association. Labor unions collect initiation fees and dues and assessments just the same as trade associations and we strive with equal vigor and determination to protect, advance, and defend the rights of our members.

"I urge you to bear these facts in mind as you make your individual decision. Mr. Fry points out quite honestly and fairly that without question it is your right to join a union if you wish and where you believe that by joining, you will be better off than you are at present or will be in the future.

"ALEA speaks for and represents air line clerical, office, fleet and passenger service employees; it has no interests outside the air line industry. We are devoted exclusively to improving the rates of pay, rules, and working conditions for such employees and defending our members when they are unfairly treated or their seniority is threatened."

I do not believe it is seriously questioned that the

C.A.B. Docket No. 19151
Exhibit No. ALEA-A
Page 5 of 5 pages

Civil Aeronautics Board has no authority to abrogate an existing collective bargaining agreement. In this case it is impractical and unrealistic to expect that employees can work side by side on the merged carrier when one is represented and one is unorganized.

Therefore, it is my position in this case, as a condition of the merger, that the ALEA contract be determined as governing for the entire group of employees involved on the merged carrier. Until such time as the contract expires it should affect all of this class and craft equally and not simply the former employees of Lake Central.

Section 29 (c) of the ALEA contract provides as follows:

"The provisions of this Agreement shall be binding upon any successor or merged Company or Companies, or any successor in control of the Company."

Having specifically contracted with ALEA for representation rights in the event of merger, ALEA has contractual rights which cannot be abrogated by a nonparty to the contract.

JA-90

BEFORE THE
CIVIL AERONAUTICS BOARD
WASHINGTON, D.C.

ALPA
I-6
50D

In the Matter of the Application of

ALLEGHENY AIRLINES, INC.

and

LAKE CENTRAL AIRLINES, INC.

under Sections 408 and 401 of the Federal Aviation Act
of 1958 for approval of the merger of Lake Central
Airlines, Inc. into Allegheny Airlines, Inc., and for
transfer of Lake Central's Certificate of Public Convenience
and Necessity for Route 88 to Allegheny.

DOCKET NO. 19151

DIRECT EXHIBITS AND TESTIMONY OF THE AIR LINE
PILOTS ASSOCIATION, INTERNATIONAL

COMMUNICATIONS WITH RESPECT TO
THIS DOCUMENT SHOULD BE SENT TO:

Mr. Charles H. Ruby, President
Air Line Pilots Association, International
55th Street and Cicero Avenue
Chicago, Illinois 60638

Mr. Allen E. Gramza, Director
Legal Department
Air Line Pilots Association, International
55th Street and Cicero Avenue
Chicago, Illinois 60638

AIR LINE PILOTS ASSOCIATION, INTERNATIONAL INDEX AND LIST OF EXHIBITS

<u>EXHIBIT NO.</u>	<u>EXHIBIT TITLE</u>	<u>PAGES</u>
1	Comparison of rights and benefits to certain employees of Allegheny Airlines, Inc., and Lake Central Airlines, Inc., under existing Collective Bargaining Agreements.	1 - 3
2	Dates and duration of existing Collective Bargaining Agreements between the two carriers and the collective bargaining units represented by the Air Line Pilots Association, International.	4
3	Testimony of Allen E. Gramza, Director, ALPA Legal Department.	5 - 6
4	Language of the <u>United-Capital</u> Labor Protective Provisions.	7 - 12
5	List of changes in the language of the United-Capital Labor Protective Provisions recommended by the Air Line Pilots Association, International, and reasons such changes are necessary.	13
6	Recommendation or precise language of the Labor Protective Provisions in this merger.	14 - 19

**COMPARISON OF RIGHTS AND BENEFITS TO EMPLOYEES OF ALLEGHENY AIRLINES, INC. (AAA)
 AND LAKE CENTRAL AIRLINES (LCA) UNDER EXISTING COLLECTIVE BARGAINING AGREEMENTS.***

BASE PAY BY AIRLINE AND YEARS OF SERVICE

AIR LINE	YEAR:	1	2	3	4	5	6	7	8	9
AAA		210	230	250	270	290	310	330	350	---
LCA		210	230	250	270	290	310	330	350	370

MILEAGE PAY, RATE PER MILE -- CENTS

AIR LINE	1st 17,000 miles	17,000 - 22,000 miles	22,000 miles and over
AAA	2.0	2.0	3.0
LCA	2.2	2.2	3.0

COMPARATIVE RATES OF COMPENSATION

Air Line	Aircraft Type	Pegged Speed m.p.h.	Gross Weight 1000#	Hours	Cpts.	1st Off.	2nd Off.
AAA	DC-9 30	480	100	85	\$2860	\$1856	----
LCA	B-727	442	160	85	\$2450	\$1576	\$1368
LCA 7-1-67	B-727	474	160	80	\$2450	\$1576	\$1368
AAA 1-1-68	580	323	55	85	\$2130	\$1400	N/A
LCA 1-1-68	580	340	53	85	\$1970	\$1266	N/A
AAA 1-1-68	440	225	48	85	\$1874	\$1218	N/A
LCA 1-1-68	340	274	47	85	\$1730	\$1132	N/A

***SOURCE, CLARIFICATION AND SPONSOR**

The materials in this exhibit are taken from existing ALPA contracts. This information is to illustrate some, not all, of the significant areas of difference in the two existing collective bargaining agreements between the air lines and the pilots in their services as represented by ALPA. For purposes of illustration only, data affecting pilots has been used. However, ALPA's participation in the case also seeks labor protective provisions for employees other than pilots. Exhibit is sponsored by Mr. Allen E. Gramza, Director, Legal Department, Air Line Pilots Association, International.

HOURLY PAY EXAMPLE BY EQUIPMENT (Effective 1-1-68)

503

AIR LINE	CV-240-340-440	CV-580 S
	Day/Night	Day/ Night
AAA	\$10.11/13.62	\$10.99/14.49
LCA	\$7.13/10.69	\$ 7.71/11.56

FLAT SALARY, FIRST OFFICER - SECOND OFFICER, YEARS OF SERVICE

AIR LINE	1st 6 Months	2nd 6 Months
AAA	525	550
LCA	475	500

MONTHLY GUARANTEES, NUMBER OF HOURS - DAY-NIGHT RATIO

AIR LINE	CAPTAIN	RESERVE CAPTAIN	FIRST OFFICER	RESERVE FIRST OFFICER	SECOND OFFICER
AAA-Props	60 60/40	65 60/40	60 60/40	65 60/40	
LCA-Props	60 60/40	70 60/40	60 60/40	70 60/40	N/A
AAA-Jets	60 60/40	70 60/30	60 60/40	70 60/40	N/A
LCA-Jets	53 60/40	62 60/40	53 60/40	62 60/40	53 60/40

JA-94

Docket #19151
 Air Line Pilots Association, Int'l.
 Exhibit No. 1 (Page 3 of 3)

ANNUAL VACATION EARNED BY YEARS OF SERVICE

504

AIR LINE	YEAR	1	5	6	7	9	11	12	13	15	18	20
AAA		15		21				22	23	30		
LCA		14	16		17	18	21			22	23	

FLIGHT TIME/DUTY TIME RATIO, AND TRIP HOUR - TIME AWAY FROM BASE RATIO

Air Line	Flight Time Duty Time Ratio	Trip Hour Time Away Ratio
AAA AAA (4/1/68)	1 for 2 Scheduled 1 for 2.5 Actual	1 for 4 1 for 3.5
LCA	Prop 1 for 3 B727 - 1 for 2.5 CV580- 1 for 2.5 (4/1/68)	B-727 - 1 for 3 Prop - 1 for 3.5 (4/1/68)

SCHEDULED TIME FREE OF DUTY FOR RESERVE PILOTS

AIR LINE	PERIODS GUARANTEED FREE OF DUTY
AAA	4 - 48 Hour Periods
LCA	8 days for Reserves

SICK LEAVE PROVISIONS IN CONTRACTS

AIR LINE	Monthly Accrual Hours	Monthly Accrual Days	Maximum Accrual Hours	Maximum Accrual Days
AAA		1		90
LCA	3-1/2		400	

JA-95

Docket #19151
 Air Line Pilots Association, International
 Exhibit #2 (Page 1 of 1)

505

EXISTING COLLECTIVE BARGAINING AGREEMENTS BETWEEN THE TWO CARRIERS AND
 THE COLLECTIVE BARGAINING UNITS REPRESENTED BY THE AIR LINE PILOTS ASSOCIATION,
 INTERNATIONAL.*

COMPANY	AGREEMENT SIGNED	UNIT	EFFECTIVE DATE	DURATION**
Allegheny Airlines, Inc.	3-8-67	Pilots	1-1-67	9-30-68
Allegheny Airlines, Inc.	11-20-67	Stewardesses	5-31-67	9-30-69
Lake Central Airlines, Inc.	8-13-66	Pilots	8-1-66	8-1-68
Lake Central Airlines, Inc.	3-10-66	Stewardesses	3-1-66	3-1-68

*Source: This information is reflected in the separate collective bargaining agreements signed and filed by the parties. The information is a matter of public record as the Railway Labor Act requires the carriers to file a copy of each new contract and changes with the National Mediation Board.

**All four renew themselves without change annually, unless written notice of intended change is served in accordance with Section 6, Title 1, of the Railway Labor Act.)

506

**TESTIMONY OF ALLEN E. GRAMZA, DIRECTOR
ALPA LEGAL DEPARTMENT**

I am Allen E. Gramza, Director of the Legal Department of the Air Line Pilots Association. My department has represented various pilot groups in CAB merger proceedings either directly or by associate counsel in the last eleven merger proceedings. It is my duty to assist the pilot groups and stewardess groups on the various airlines by advising and counselling them on problems arising from the mergers. In my capacity as Director of the ALPA Legal Department, it is also my duty to advise and counsel the pilot members of the various Negotiating Committees and the Staff Negotiators. In this capacity I have become personally acquainted with recent problems arising from attempts to implement the Labor Protective Provisions in each case.

These labor protective provisions are similar in every detail to the provisions contained in Order No. E-16605, the UAL-CAP merger, with an added Section 14 to clarify to duty to amalgamate existing collective bargaining contracts.

In mergers approved prior to 1967 the merging companies agreed with ALPA's interpretation that the Labor Protective Provisions required that existing Labor Collective Bargaining Agreements be re-negotiated, amalgamated, or otherwise merged. In recent cases, however, the surviving air carriers have taken varying positions relative to the merging of existing Collective Bargaining Agreements with the result that the mergers have created possible labor disputes.

I respectfully refrain from mentioning the carriers by name for the reason that as of this writing no petition for relief has been filed with the CAB and a decision on the course of action to be pursued by ALPA has not been made. I will, therefore, refer to the Carriers as A, B, and C, and will leave to the discretion of the Examiner whether to identify them by name.

Carrier A takes the position that they need not negotiate a merged or amalgamated Collective Bargaining Agreement and that they can, under the Labor Protective Provisions, unilaterally impose the surviving carrier's Collective Bargaining Agreement on the merged carrier despite the fact that there are differences in wages, rules, working conditions, and vested rights such as earned vacation, sick leave and retirement benefits.

Carrier B has vacillated in some degree on its position, but the underlying position appears to be that they do not have to negotiate an amalgamated or merged Collective Bargaining Agreement and they have been honoring various parts of the Agreements of both carriers - for example, applying the longer flight time limitations of an Agreement to one group of employees even though they were hired by the surviving carrier.

Carrier C has agreed to meet with ALPA, but has insisted that the Labor Agreement of the surviving carrier should be unilaterally applied to all employees.

ALPA's exhibits attached, hereto, show the various Pilot Collective Bargaining Agreements in effect, the different expiration dates and various differences in rates of pay, rules and working conditions, as well as differences in vested rights such as earned vacation credits and earned sick leave credits.

Experience in these cases has demonstrated that the present Labor Protective Provisions are susceptible of diverse interpretations with the result that labor disputes are a threat to peaceful negotiations of these disputes - for example, in the case of Carrier A the National Mediation Board has entered the case in recognition of the existence of a labor dispute. The ultimate result of this action could be an economic sanction should the dispute not be resolved through existing procedures.

The purpose of my testimony, and exhibits introduced, is to demonstrate to the CAB the necessity of changing the Labor Protective Provisions to make as a condition of the Order approving the merger the requirement that the parties enter into good-faith negotiations to amalgamate the various Collective Bargaining Agreements for each class and craft of employee.

LANGUAGE OF THE UNITED-CAPITAL LABOR PROTECTIVE PROVISIONS

Section 1. The fundamental scope and purpose of the conditions specified in paragraph 2(c) of this Order are to provide for compensatory allowance to employees who may be affected by the proposed merger of United and Capital approved by this Order, and it is the intent that such conditions are to be restricted to those changes in employment solely due to and resulting from such merger. Fluctuations, rises and falls, and changes in volume or character of employment brought about solely by other causes are not covered by or intended to be covered by this Order.

Section 2(a). The term "merger" as used herein means joint action by the two carriers whereby they unify, consolidate, merge, or pool in whole or in part their separate air line facilities or any of the operations or services previously performed by them through such separate facilities.

(b). The term "carrier" as used herein refers to either United or Capital or to the corporation surviving after consummation of the proposed merger of the two companies.

(c). The term "effective date of merger" as used herein shall mean the effective date of the amended certificates of public convenience and necessity transferred to United pursuant to the approval granted in this Order.

(d). The term "employee" as used herein shall mean an employee of the carriers other than a temporary or part-time employee.

Section 3. Insofar as the merger affects the seniority rights of the carriers' employees, provisions shall be made for the integration of seniority lists in a fair and equitable manner, including, where applicable, agreement through collective bargaining between the carriers and the representatives of the employees affected. In the event of failure to agree, the dispute may be submitted by either party for adjustment in accordance with Section 13.

Section 4 (a). Subject to the applicable conditions set forth herein, no employee of either of the carriers involved in the merger who is continued in service shall as a result of the merger be placed in a worse position with respect to compensation than he occupied immediately prior to the effective date of such merger so long as he is unable in the normal exercise of his seniority rights under existing agreements, rules, and practices to obtain a position producing compensation equal to or exceeding the compensation of the position held by him immediately prior to such date, except however, that if he fails to exercise his seniority rights to secure another available position, which does not require a change in residence, to which he is entitled under the working agreement and which carries a rate of pay and compensation exceeding those of the position which he elects to retain, he shall thereafter be treated for the purposes of this section as occupying the position which he elects to decline.

(b). The protection afforded by the foregoing paragraph is hereby designated as a "displacement allowance" which shall be determined in each instance in the manner hereinafter described. Any employee entitled to such an allowance is hereinafter referred to as a "displaced" employee.

(c). Each displacement allowance shall be a monthly allowance determined by computing the total compensation received by the employee and his total time paid for during the last twelve (12) months in which he performed service immediately preceding the date of his displacement (such twelve (12) months being hereinafter referred to as the "test period") and by

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(b). The term "carrier" as used herein refers to either United or Capital or to the corporation surviving after consummation of the proposed merger of the two companies.

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(d). The term "employee" as used herein shall mean an employee of the carriers other than a temporary or part-time employee.

Section 3. Insofar as the merger affects the seniority rights of the carriers' employees, provisions shall be made for the integration of seniority lists in a fair and equitable manner, including, where applicable, agreement through collective bargaining between the carriers and the representatives of the employees affected. In the event of failure to agree, the dispute may be submitted by either party for adjustment in accordance with Section 13.

Section 4(a). Subject to the applicable conditions set forth herein, no employee of either of the carriers involved in the merger who is continued in service shall as a result of the merger be placed in a worse position with respect to compensation than he occupied immediately prior to the effective date of such merger so long as he is unable in the normal exercise of his seniority rights under existing agreements, rules, and practices to obtain a position producing compensation equal to or exceeding the compensation of the position held by him immediately prior to such date, except however, that if he fails to exercise his seniority rights to secure another available position, which does not require a change in residence, to which he is entitled under the working agreement and which carries a rate of pay and compensation exceeding those of the position which he elects to retain, he shall thereafter be treated for the purposes of this section as occupying the position which he elects to decline.

(b). The protection afforded by the foregoing paragraph is hereby designated as a "displacement allowance" which shall be determined in each instance in the manner hereinafter described. Any employee entitled to such an allowance is hereinafter referred to as a "displaced" employee.

(c). Each displacement allowance shall be a monthly allowance determined by computing the total compensation received by the employee and his total time paid for during the last twelve (12) months in which he performed service immediately preceding the date of his displacement (such twelve (12) months being hereinafter referred to as the "test period") and by

dividing separately the total compensation and the total time paid for by twelve, thereby producing the average monthly compensation and average monthly time paid for, which shall be the minimum amounts used to guarantee the displaced employee; and if his compensation in his current position is less in any month in which he performs work than the aforesaid average compensation, he shall be paid the difference, less compensation for any time lost on account of voluntary absences to the extent that he is not available for service equivalent to his average monthly time during the test period, but he shall be compensated in addition thereto at the rate of the position filled for any time worked in excess of the average monthly time paid for during the test period.

(d). The protection afforded herein shall only apply to displacement occurring within a period of three years from the effective date of the merger (referred to herein as the claim period); and the period during which this protection is to be given (referred to herein as the protective period) shall extend for a period of four years from the date on which the employee is displaced.

Section 5 (a). Any employee of either of the carriers participating in the merger who is deprived of employment as a result of said merger shall be accorded an allowance (hereinafter termed a dismissal allowance), based on length of service which (except in the case of an employee with less than one year of service) shall be a monthly allowance equivalent in each instance to sixty per cent (60) of the average monthly compensation of the employee in question during the last twelve months of his employment in which he earned compensation prior to the date he is first deprived of employment as a result of the merger. This dismissal allowance will be made to each eligible employee, while unemployed, by United during a period beginning at the date he is first deprived of employment as a result of the merger and extending in each instance for a length of time determined and limited by the following schedule:

<u>Length of Service</u>	<u>Period of Payment</u>
1 year and less than 2 years	6 months
2 years and less than 3 years	12 months
3 years and less than 5 years	18 months
5 years and less than 10 years	36 months
10 years and less than 15 years	48 months
15 years and over	60 months

In the case of an employee with less than one year of service such employee shall not be covered by the benefits provided in this section, but shall receive such benefits, and only such benefits, as are provided by Section 7.

(b). For the purposes of this Order, the length of service of the employee shall be determined from the date he last acquired an employment status with the employing carrier and he shall be given credit for one month's service for each month in which he performed any service (in any capacity whatsoever) and twelve such months shall be credited as one year's service. The employment status of an employee shall not be interrupted by the furlough in instances where the employee has a right to and does return to service when called. In determining length of service of an employee acting as an officer or other official representative of an employee organization he will be given credit for performing service while so engaged on leave of absence from the service of the carrier: Provided, that in calculating the dismissal allowance for such an employee, such allowance shall be based upon the compensation paid such employee by the carrier during his last twelve (12) months of service on the company payroll and not on the compensation he may have been paid by the employee representative organization.

(c). An employee shall not be regarded as deprived of employment in case of his resignation, death, or on account of age or disability in accordance with the current rules and practices applicable to employees generally, dismissal for justifiable cause in accordance with the

rules, or furlough because of reduction in forces due to seasonal requirements of the service; nor shall any employee be regarded as deprived of employment as the result of the merger who is not deprived of his employment within three years from the effective date of said merger.

(d). Each employee receiving a dismissal allowance shall keep United informed of his address and the name and address of any other person by whom he may be regularly employed.

(e). The dismissal allowance shall be paid to the regularly assigned incumbent of the position abolished. If the position of an employee is abolished while he is absent from service, he will be entitled to the dismissal allowance when he is available for service. The employee temporarily filling said position at the time it was abolished will be given a dismissal allowance on the basis of said position until the regular employee is available for service and thereafter shall revert to his previous status and will be given a dismissal allowance accordingly if any is due.

(f). An employee receiving a dismissal allowance shall be subject to call to return to service after being notified in accordance with the working agreement, and such employee may be required to return to the service of the employing carrier for other reasonably comparable employment for which he is physically and mentally qualified and which does not require a change in his place of residence, if his return does not infringe upon the employment rights of other employees under the working agreement.

(g). If an employee who is receiving a dismissal allowance returns to service the dismissal allowance shall cease while he is so reemployed and the period of time during which he is so reemployed shall be deducted from the total period for which he is entitled to receive a dismissal allowance. During the time of such reemployment, however, he shall be entitled to protection in accordance with the provisions of Section 4.

(h). If an employee who is receiving a dismissal allowance obtains other employment, his dismissal allowance shall be reduced to the extent that the sum total of his earnings in such employment plus his allowance and any unemployment insurance benefit (or similar benefit) amount upon which his dismissal allowance is based: Provided, that this shall not apply to employees with less than one year's service.

(i) A dismissal allowance shall cease prior to the expiration of its prescribed period in the event of:

1. Failure without good cause to return to service after being notified of position for which he is eligible and as provided in paragraphs (f) and (g).

2. Resignation.

3. Death.

4. Retirement or on account of age or disability in accordance with the current rules and practices applicable to employees generally.

5. Dismissal for justifiable cause.

Section 6. An employee affected by the merger shall not during the applicable protective period be deprived of benefits attaching to his previous employment, such as hospitalization, relief, and the like.

Section 7. Any employee eligible to receive a dismissal allowance under Section 5 hereof may, at his option at the time of merger, resign and (in lieu of all other benefits and protections provided in this order) accept in a lump sum a separation allowance determined in accordance with the following schedule:

<u>Length of Service</u>	<u>Separation Allowance</u>
1 year and less than 2 years	3 months' pay
2 years and less than 3 years	6 months' pay
3 years and less than 5 years	9 months' pay
5 years and over	12 months' pay

In the case of employees with less than one year's service, five days' pay at the straight time rate per working day of the position last occupied, for each full month in which they performed service will be paid as the lump sum.

(a). Length of service shall be computed as provided in Section 5.

(b). One month's pay shall be computed by multiplying by 30 the calendar daily rate of pay received by the employee in the position last occupied prior to time of the merger.

Section 8(a). Any employee who is retained in the service of the carrier surviving the merger (or who is later restored to service from the group of employees entitled to receive a dismissal allowance) who is required to change the point of his employment as a result of such merger, and is therefore required to move his place of residence, shall be reimbursed for all expenses of moving his household and other personal effects and for the traveling expenses of himself and members of his family, including living expenses for himself and his family and his own actual wage loss during the time necessary for such transfer, and for a reasonable time thereafter (not to exceed two working days), used in securing a place of residence in his new location. The exact extent of the responsibility of the carrier under this provision and the ways and means of transportation shall be agreed upon in advance between the carrier and the affected employee or his representative. No claims for expenses under this section shall be allowed unless they are incurred within three years from the effective date of the merger, and the claim must be submitted within ninety (90) days after the expenses are incurred.

(b). Changes in place of residence subsequent to the initial change caused by the merger and which grow out of the normal exercise of seniority in accordance with working agreements are not comprehended within the provisions of this section.

Section 9(a). The following provisions shall apply, to the extent they are applicable in each instance, to any employee who is retained in the service of the carriers involved in this merger (or who is later restored to such service from the group of employees entitled to receive a dismissal allowance) who is required to change the point of his employment as a result of such merger and is therefore required to move his place of residence.

1. If the employee owns his own home in the locality from which he is required to move, he shall at his option be reimbursed by the carrier for any loss suffered in the sale of his home for less than its fair value. In each case the fair value of the home in question shall be determined as of a date sufficiently prior to the merger to be unaffected thereby; Provided, however, that if the home is not sold within a substantial period of time after the merger, then the fair value of the home shall be determined as of a date as closely

related to the date of sale as possible, with an agreed-upon adjustment being made to exclude any effect of the merger on such fair value. The carrier shall in each instance be afforded an opportunity to purchase the home at such fair value before it is sold by the employee to any other party.

2. If the employee is under a contract to purchase his home, the carrier shall protect him against loss to the extent of the fair value of any equity he may have in the home and in addition shall relieve him from any further obligations under his contract.
3. If the employee holds an unexpired lease of a dwelling occupied by him as his home, the carrier shall protect him from all loss and cost in securing the cancellation of his said lease.

(b). Changes in place of residence subsequent to the initial change caused by the merger and which grow out of the normal exercise of seniority in accordance with working agreements are not comprehended within the provisions of this section.

(c). No claim for loss shall be paid under the provisions of this section which is not presented within three years after the effective date of the merger.

(d). Should a controversy arise in respect to the value of the home, the loss sustained in its sale, the loss under contract for purchase, loss and cost in securing termination of lease, or any other question in connection with these matters, it shall be decided through joint conference between the employee or his representative and the carrier, and, in the event they are unable to agree, the dispute may be referred by either party to a board of three competent real estate appraisers, selected in the following manner: One to be selected by the employee or his representative and one by the carrier, respectively; these two shall endeavor by agreement within ten days after their appointment to select the third appraiser or to select some person authorized to name the third appraiser; and in the event of failure to agree, then the Chairman of the National Mediation Board shall be requested to appoint the third appraiser. A decision of a majority of the appraisers shall be required and said decision shall be final and conclusive. The salary and expenses of the third or neutral appraiser, including the expenses of the appraisal board, shall be borne equally by the parties to the proceedings. All other expenses shall be paid by the party incurring them, including the salary of the appraiser selected by such party.

Section 10. If either carrier, on or after July 19, 1960, shall rearrange or adjust its forces in anticipation of the merger, with the purpose or effect of depriving an employee of benefits to which he should be entitled under this order as an employee immediately affected by the merger, the provisions of this order shall apply to such an employee as of the date when he is so affected.

Section 11. United and Capital shall jointly or severally give at least forty-five (45) days' written notice containing a full and adequate statement of the proposed changes to be effected by the merger, including an estimate of the number of employees of each class, craft, or field of endeavor affected by the intended changes. Such notice shall be posted on bulletin boards or other conspicuous places convenient to the employees of said carriers, and a copy of the notice shall be sent by registered mail to all authorized representatives of any of the employees of both carriers.

If requested in writing by any employee or employees of either carrier or the authorized representative of such employee or employees, the date and place of a meeting between said employees or their representatives and the representatives of the carriers to settle problems of the rearrangement of such

employees arising out of and because of the merger shall be agreed upon within ten (10) days after such request is received by the carrier. The meeting shall commence within thirty (30) days from the date the request is received by the carrier.

In the event of a failure to agree upon a settlement of a problem or of problems presented at the meeting, the unsettled problems may be submitted by either party for adjustment in accordance with Section 13.

Section 12. No employee of either carrier shall, as a condition of eligibility for the protection afforded by the terms of this order, be required to accept employment with the surviving carrier that is not within the class, craft, or field of endeavor in which he was employed by either carrier on the date of this order.

Section 13. In the event that any dispute or controversy (except as to matters arising under Section 9) arises with respect to the protection provided herein, which cannot be settled by the carrier and the employee, or his authorized representative, within thirty days after the controversy arises, it may be referred, by either party, to an arbitration committee for consideration and determination, the formation of which committee, its duties, procedure, expenses, etc., shall be agreed upon by the carriers and the employees, or the duly authorized representatives of the employees.

LIST OF CHANGES IN THE LANGUAGE OF THE UNITED-CAPITAL LABOR PROTECTIVE PROVISIONS
RECOMMENDED BY THE AIR LINE PILOTS ASSOCIATION, INTERNATIONAL, AND REASONS SUCH
CHANGES ARE NECESSARY.

Sections* 1, 2, 5, (d), 11 should be changed to show the carriers involved in this Docket #19151 merger. See Exhibit #6 for recommendation of ALPA. Other similar changes may be necessary in the body of the document to correct references to the specific carrier.

A Section 14 should be added to cope with the problems discussed in the testimony attached as Exhibit #3 above. The Air Line Pilots Association, International recommends the following language:

"Section 14. The surviving carrier and the union will commence good-faith negotiations to combine, merge, or amalgamate the various existing collective bargaining agreements for each class and craft of employee within thirty days of the Board Order approving the merger.

*Sections refer to the "Language of the United-Capital Labor Protective Provisions", attached above as Exhibit #4.

RECOMMENDATIONS OF PRECISE LANGUAGE OF THE LABOR PROTECTIVE PROVISIONS

Section 1. The fundamental scope and purpose of the conditions specified in Board Order No. E-16605 (United-Capital Merger, dated April 3, 1961), are to provide for compensatory allowances to employees who may be affected by the merger. The scope and purpose of that Order may be applied to the proposed merger of Allegheny Airlines, Inc. and Lake Central Airlines, Inc. It is the intent that such conditions are to be restricted to those changes in employment solely due to and resulting from such merger. Fluctuations, rises and falls, and changes in volume or character of employment brought about solely by other causes are not covered by or intended to be covered by this Order.

Section 2 (a). The term "merger" as used herein means joint action by the two carriers whereby they unify, consolidate, merge, or pool, in whole, or in part, their separate air line facilities or any of the operations or services previously performed by them through such separate facilities.

(b). The term "carrier" as used herein refers to Allegheny Airlines, Inc. and Lake Central Airlines, Inc., or to the corporation surviving after consummation of the proposed merger of the two companies.

(c). The term "effective date of merger" as used herein shall mean the effective date of the amended certificates of public convenience and necessity transferred to the surviving carrier pursuant to the approval granted in this Order.

(d). The term "employee" as used herein shall mean an employee of the carriers other than a temporary or part-time employee.

Section 3. Insofar as the merger affects the seniority rights of the carriers' employees, provisions shall be made for the integration of seniority lists in a fair and equitable manner, including, where applicable, agreement through collective bargaining between the carriers and the representatives of the employees affected. In the event of a failure to agree, the dispute may be submitted by either party for adjustment in accordance with Section 13.

Section 4 (a). Subject to the applicable conditions set forth herein, no employee of the carriers involved in the merger who is continued in service shall as a result of the merger be placed in a worse position with respect to compensation than he occupied immediately prior to the effective date of such merger so long as he is unable in the normal exercise of his seniority rights under existing agreements, rules and practices to obtain a position producing compensation equal to or exceeding the compensation of the position held by him immediately prior to such date, except, however, that if he fails to exercise his seniority rights to secure another available position which does not require a change in residence to which he is entitled under the working agreement and which carries a rate of pay and compensation exceeding those of the position which he elects to retain, he shall thereafter be treated for the purposes of this section as occupying the position which he elects to decline.

(b). The protection afforded by the foregoing paragraph is hereby designated as a "displacement allowance" which shall be determined in each instance in the manner hereinafter described. Any employee entitled to such an allowance is hereinafter referred to as a "displaced" employee.

(c). Each displacement allowance shall be a monthly allowance determined by computing the total compensation received by the employee and his total time paid for during the last twelve (12) months in which he performed service immediately preceding the date of his displacement (such twelve

(12) months being hereinafter referred to as the "test period") and by dividing the total compensation and the total time paid for by twelve separately, thereby producing the average monthly compensation and average monthly time paid for, which shall be the minimum amounts used to guarantee the displaced employee; and if his compensation in his current position is less in any month in which he performs work than the aforesaid average compensation, he shall be paid the difference, less compensation for any time lost on account of voluntary absences to the extent that he is not available for service equivalent to his average monthly time during the test period, but he shall be compensated in addition thereto at the rate of the position filled for any time worked in excess of the average monthly time paid for during the test period.

(d). The protection afforded herein shall only apply to the displacements occurring within a period of three years from the effective date of the merger (referred to herein as the claim period); and the period during which this protection is to be given (referred to herein as the protective period) shall extend for a period of four years from the date on which the employee is displaced.

Section 5 (a). Any employee of either of the carriers participating in the merger who is deprived of employment as a result of said merger shall be accorded an allowance (hereinafter termed a dismissal allowance), based on length of service which (except in the case of an employee with less than one year of service) shall be a monthly allowance equivalent in each instance to sixty per cent (60%) of the average monthly compensation of the employee in question during the last twelve months of his employment in which he earned compensation prior to the date he is first deprived of employment as a result of the merger. This dismissal allowance will be made to each eligible employee, while unemployed, by the surviving carrier during a period beginning at the date he is first deprived of employment as a result of the merger and extending in each instance for a length of time determined and limited by the following schedule:

<u>Length of Service</u>	<u>Period of Payment</u>
1 year and less than 2 years	6 months
2 years and less than 3 years	12 months
3 years and less than 5 years	18 months
5 years and less than 10 years	36 months
10 years and less than 15 years	48 months
15 years and over	60 months

In the case of an employee with less than one year of service, such employee shall not be covered by the benefits provided in this section, but shall receive such benefits, and only such benefits, as are provided by Section 7.

(b). For the purposes of this Order, the length of service of the employee shall be determined from the date he last acquired an employment status with the employing carrier and he shall be given credit for one month's service for each month in which he performed any service (in any capacity whatsoever) and twelve such months shall be credited as one year's service. The employment status of an employee shall not be interrupted by the furlough in instances where the employee has a right to and does return to service when called. In determining length of service of an employee acting as an officer or other official representative of an employee organization, he will be given credit for performing service while so engaged on leave of absence from the service of the carrier: Provided, that in calculating the dismissal allowance for such an employee, such allowance shall be based upon the compensation paid such employee by the carrier during his last twelve (12) months of service on the company payroll and not on the compensation he may have been paid by the employee representative organization.

(c). An employee shall not be regarded as deprived of employment in case of his resignation, death, or on account of age or disability in accordance with the current rules and practices applicable to employees generally, dismissal for justifiable cause in accordance with the rules, or furlough because

of reduction in forces due to seasonal requirements of the service; nor shall any employee be regarded as deprived of employment as the result of the merger who is not deprived of his employment within three years from the effective date of said merger.

(d). Each employee receiving a dismissal allowance shall keep the surviving carrier informed of his address and the name and address of any other person by whom he may be regularly employed.

(e). The dismissal allowance shall be paid to the regularly assigned incumbent of the position abolished. If the position of an employee is abolished while he is absent from service, he will be entitled to the dismissal allowance when he is available for service. The employee temporarily filling said position at the time it was abolished will be given a dismissal allowance on the basis of said position until the regular employee is available for service and thereafter shall revert to his previous status and will be given a dismissal allowance accordingly, if any is due.

(f). An employee receiving a dismissal allowance shall be subject to call to return to service after being notified in accordance with the working agreement, and such employee may be required to return to the service of the employing carrier for other reasonably comparable employment for which he is physically and mentally qualified and which does not require a change in his place of residence, if his return does not infringe upon the employment rights of other employees under the working agreement.

(g). If an employee who is receiving a dismissal allowance returns to service, the dismissal allowance shall cease while he is so re-employed, and the period of time during which he is so re-employed shall be deducted from the total period for which he is entitled to receive a dismissal allowance. During the time of such re-employment, however, he shall be entitled to protection in accordance with the provision of Section 4.

(h). If an employee who is receiving a dismissal allowance obtains other employment his dismissal allowance shall be reduced to the extent that the sum total of his earnings in such employment plus his allowance and any unemployment insurance benefits (or similar benefit) exceed the amount upon which his dismissal allowance is based: Provided, that this shall not apply to employees with less than one year's service.

(i). A dismissal allowance shall cease prior to the expiration of its prescribed period in the event of:

1. Failure without good cause to return to service after being notified of position for which he is eligible and as provided in paragraphs (f) and (g).
2. Resignation.
3. Death.
4. Retirement or on account of age or disability in accordance with the current rules and practices applicable to employees generally.
5. Dismissal for justifiable cause.

Section 6. An employee affected by the merger shall not during the applicable protective period be deprived of benefits attaching to his previous employment such as hospitalization, relief and the like.

Section 7. Any employee eligible to receive a dismissal allowance under Section 5 hereof may, at his option at the time of merger, resign and (in lieu of all other benefits and protections provided in this order) accept in a lump sum a separation allowance determined in accordance with the following schedule:

<u>Length of Service</u>	<u>Separation Allowance</u>
1 year and less than 2 years	3 month's pay
2 years and less than 3 years	6 month's pay
3 years and less than 5 years	9 month's pay
5 years and over	12 month's pay

In the case of employees with less than one year's service, five day's pay at the straight time rate per working day of the position last occupied, for each full month in which they performed service will be paid as the lump sum.

(a). Length of service shall be computed as provided in Section 5.

(b). One month's pay shall be computed by multiplying by 30 the calendar daily rate of pay received by the employee in the position last occupied prior to time of the merger.

Section 8 (a). Any employee who is retained in the service of the carrier surviving the merger (or who is later restored to service from the group of employees entitled to receive a dismissal allowance) who is required to change the point of his employment as a result of such merger, and is therefore required to move his place of residence, shall be reimbursed for all expenses of moving his household and other personal effects and for the traveling expenses of himself and members of his family, including living expenses for himself and his family and his own actual wage loss during the time necessary for such transfer, and for a reasonable time thereafter (not to exceed two working days), used in securing a place of residence in his new location. The exact extent of the responsibility of the carrier under this provision and the ways and means of transportation shall be agreed upon in advance between the carrier and the affected employee or his representative. No claims for expenses under this section shall be allowed unless they are incurred within three years from the effective date of merger, and the claim must be submitted within ninety (90) days after the expenses are incurred.

(b). Changes in place of residence subsequent to the initial change caused by the merger and which grow out of the normal exercise of seniority in accordance with working agreements are not comprehended within the provisions of this section.

Section 9(a). The following provisions shall apply, to the extent they are applicable in each instance, to any employee who is retained in the service of the carriers involved in this merger (or who is later restored to such service from the group of employees entitled to receive a dismissal allowance) who is required to change the point of his employment as a result of such merger and is, therefore, required to move his place of residence.

1. If the employee owns his own home in the locality from which he is required to move, he shall at his option be reimbursed by the carrier for any loss suffered in the sale of his home for less than its fair value. In each case, the fair value of the home in question shall be determined as of a date sufficiently prior to the merger to be unaffected thereby: Provided, however, that if the home is not sold within a substantial period of time after the merger, then the fair value of the home shall be determined as

of a date as closely related to the date of sale as possible, with an agreed upon adjustment being made to exclude any effect of the merger on such fair value. The carrier shall in each instance be afforded an opportunity to purchase the home at such fair value before it is sold by the employee to any other party.

2. If the employee is under a contract to purchase his home, the carrier shall protect him against loss to the extent of the fair value of any equity he may have in the home and in addition shall relieve him from any further obligations under his contract.

3. If the employee holds an unexpired lease of a dwelling occupied by him as his home, the carrier shall protect him from all loss and cost in securing the cancellations of said lease.

(b). Changes in place of residence subsequent to the initial change caused by the merger and which grow out of the normal exercise of seniority in accordance with working agreements are not comprehended within the provisions of this section.

(c). No claim for loss shall be paid under the provisions of this section which is not presented within three years after the effective date of the merger.

(d). Should a controversy arise in respect to the value of the home, the loss sustained in its sale, the loss under contract for purchase, loss and cost in securing termination of lease, or any other question in connection with these matters, it shall be decided through joint conference between the employee or his representative and the carrier, and, in the event they are unable to agree, the dispute may be referred by either party to a board of three competent real estate appraisers, selected in the following manner: One to be selected by the employee or his representative and one by the carrier, respectively; these two shall endeavor by agreement within ten days after their appointment to select the third appraiser or to select some person authorized to name the third appraiser; and in the event of failure to agree, then the Chairman of the National Mediation Board shall be requested to appoint the third appraiser. A decision of a majority of the appraiser shall be required and said decision shall be final and conclusive. The salary and expenses of the third or neutral appraiser, including the expenses of the appraisal board, shall be borne equally by the parties to the proceedings. All other expenses shall be paid by the party incurring them, including the salary of the appraiser selected by each party.

Section 10. If the carriers, on or after October 18, 1967, shall rearrange or adjust forces in anticipation of the merger, with the purpose or effect of depriving an employee of benefits to which he should be entitled under this order as an employee immediately affected by the merger, the provisions of this order shall apply to such an employee as of the date when he is so affected.

Section 11. Allegheny Airlines, Inc. and Lake Central Airlines, Inc. shall jointly or severally give at least forty-five (45) days written notice containing a full and adequate statement of the proposed changes to be effected by the merger, including an estimate of the number of employees of each class, craft, or field of endeavor affected by the intended changes. Such notice shall be posted on bulletin boards or other conspicuous places convenient to the employees of said carriers, and a copy of the notice shall be sent by registered mail to all authorized representatives of any of the employees of the carriers.

If requested in writing by any employee or employees of the carriers or the authorized representative of such employee or employees, the date and place of a meeting between said employees or their representatives and the representatives of the carriers to settle problems of the rearrangement of such employees arising out of and because of the merger shall be agreed upon within ten (10) days after such request is received by the carrier. The meeting shall commence within thirty (30) days from the date the request is received by the carrier.

In the event of a failure to agree upon a settlement of a problem or of problems presented at the meeting the unsettled problems may be submitted by either party for adjustment in accordance with Section 13.

Section 12. No employee of the carriers shall, as a condition of eligibility for the protection afforded by the terms of this order, be required to accept employment with the surviving carrier that is not within the class, craft, or field of endeavor in which he was employed on the date of this order.

Section 13. In the event that any dispute or controversy (except as to matters arising under Section 9) arises with respect to the protection provided herein, which cannot be settled by the carrier and the employee, or his authorized representative, within thirty (30) days after the controversy arises, it may be referred, by either party, to an arbitration committee for consideration and determination, the formation of which committee, its duties, procedure, expenses, etc., shall be agreed upon by the carriers and the employees, or the duly authorized representatives of the employees.

Section 14. The surviving carrier and the union will commence good-faith negotiations to combine merge, or amalgamate the various existing collective bargaining agreements for each class and craft of employee within thirty days of the Board Order approving the merger.

Law Offices
MULHOLLAND, HICKEY & LYMAN
620 Tower Building
Washington, D. C. 20005

November 30, 1967

Mr. Milton H. Shapiro, Hearing Examiner
Civil Aeronautics Board
1825 Connecticut Avenue, N. W.
Washington, D. C. 20428

Re: Allegheny-Lake Central Merger
Docket No. 19151

Dear Mr. Shapiro:

It is requested that this letter serve as a response to the request for evidence of counsel for the Bureau of Operating Rights forming a part of your report of the prehearing conference held November 9, 1967, in the above-captioned proceeding.

Responding to Item D, the International Association of Machinists and Aerospace Workers (IAMAW) states that it is the duly designated representative under the provisions of the Railway Labor Act, 45 U.S.C.A. 151 et seq., of the craft or class of mechanics and related employees of Allegheny Airlines.

The IAMAW does not oppose the merger from which authority from the Board is sought. It is, however, the position of the IAMAW that the Board, as a condition of approving the proposed merger, should impose employee protective conditions similar to those imposed in the so-called United-Capital Merger.

Sincerely yours,

MULHOLLAND, HICKEY & LYMAN

By

William J. Hickey

Attorneys for International Association
of Machinists and Aerospace Workers

WJH/jm

cc: All Parties

EAN-14 1 motions to strike thereafter.

2 MR. COLODNY: Fine. At this time, I would offer the
3 exhibits previously listed on the sponsorship list under the
4 name of L. O. Barnes to be received in the record.

5 EXAMINER SHAPIRO: Is there any objection?

6 (No response.)

7 EXAMINER SHAPIRO: I hear none. These exhibits are
8 hereby received in evidence. That would include 100-A now.

9 MR. COLODNY: That is correct. I am sorry to say
10 we now must correct the sponsorship list to add 100-A, and again
11 that is co-sponsored with Mr. LeBuhn.

12 (Whereupon, the documents marked

13 Joint Exhibits T-1, 100, 100-A,
14 117, 280 and 282 were received
15 in evidence.)

16 EXAMINER SHAPIRO: Is there any cross examination
17 of this witness?

18 Mr. Sickles, please.

19 CROSS EXAMINATION

20 BY MR. SICKLES:

21 Q Mr. Barnes, I note on page 3 of the document entitled
22 T-1 that you are of the opinion that the labor agreements
23 negotiated by Lake Central with certain unions are not legally
24 applicable to the employees of Lake Central when they become
25 employees of Allegheny. Could you advise the basis for that

EAN-15 1 determination by Allegheny?

2 A It is based on advise of counsel and is reflected herein
3 on that basis.

4 Q In the event the merger is approved, Mr. Barnes, is it
5 not correct that the same basic service will be offered to the
6 public under the merged carrier as is now offered under the
7 two separate carriers?

8 A The purpose remains the same.

9 Q Is it not also correct that the basic work performed
10 by aircraft or flight dispatchers will remain basically the
11 same?

12 A That is correct.

13 Q Is it not correct that the Air Line Dispatchers
14 Association was not invited to nor did it actually participate
15 in any of the negotiations leading to this merger?

16 A That is correct.

17 Q The dispatchers of Allegheny are not covered by any
18 collective bargaining agreement, is that correct?

19 A They are not.

20 Q Is this the only area in which outstanding obligations
21 of Lake Central are not being assumed by the surviving carrier?

22 A As it relates to the dispatcher group?

23 Q As they relate to any group.

24 A No, there are other groups. The Teamsters represent
25 the mechanics of Lake Central and at Allegheny they are

EAN-16 1 represented by the International Association of Machinists.
2 The ground personnel and reservations people are represented
3 by the Air Line Employees Association. They are not represented
4 by anyone at Allegheny.

5 Q I had reference to areas other than collective
6 bargaining agreements, other areas of financial obligation
7 or other obligation that is not being assumed by the surviving
8 carrier.

9 A I don't believe I understand your question.

10 Q Is there any other area in which Lake Central may
11 have contractually provided certain obligations with outside
12 individuals or corporations which are not being assumed by
13 the surviving carrier?

14 A I cannot answer that. I don't know.

15 Q Were you aware, Mr. Barnes, or are you aware that the
16 determination that the collective bargaining agreements of
17 Lake Central Airlines do not survive the merger, that this view
18 has not been espoused by two airlines seeking to merge since
19 the United-Capitol merger?

20 A I am not familiar with the two carriers or the two
21 mergers to which you refer, but I am clear that Allegheny Airline
22 is on record as adopting without change the labor protective
23 provisions which the Board initially developed and applied in
24 the United-Capitol merger and has since been applied in a
25 number of successive mergers. We believe that those labor

EAN-17 1 protective provisions give adequate coverage and in fact are
2 very comprehensive as to their protection to both organized
3 and non-organized personnel.

4 It is our position that a union to represent the
5 presently non-organized personnel groups of Allegheny Airlines
6 will represent that group only as they follow the normal prac-
7 tices and will do so as a result of an election as the will
8 of the majority of the people of Allegheny Airlines.

9 MR. SICKLES: Well, Mr. Examiner, Mr. Barnes has
10 answered my initial question stating that his determination
11 was based on advise of counsel, and I obviously can't get more
12 deeply involved in that because of the problems of confidential
13 communication, etc. I wonder if I could inquire of counsel
14 for Allegheny whether they anticipate calling any additional
15 witnesses to testify in this regard?

16 MR. COLODNY: We do not.

17 MR. SICKLES: I would then move to strike the
18 testimony of Mr. Barnes with reference to the applicability of
19 Lake Central's labor agreements and their effect after the
20 consummation of the merger.

21 MR. COLODNY: Mr. Examiner, it seems to me Mr.
22 Sickles has misconstrued what Mr. Barnes has said. Mr. Barnes
23 has said the basis on which he has made his judgment -- this
24 is a matter, I presume, that Mr. Sickles and Allegheny or any
25 other party will argue on brief to the Examiner.

EAN-18

1 EXAMINER SHAPIRO: Yes. I think we will just accept
2 the statement as his testimony as to his position and we will
3 have the legal support be a matter for brief.

4 MR. SICKLES: All right, I will abide by that
5 ruling.

6 I have no further questions.

7 EXAMINER SHAPIRO: Mr. Johnson.

8 BY MR. JOHNSON:

9 Q Mr. Barnes, you are familiar, I take it, from what
10 you said, with the fact that Lake Central has a collective
11 bargaining agreement for its fleet and passenger service
12 employees with the Air Line Employees Association, International,
13 as reflected in Joint Exhibit 120.

14 A Yes, I am familiar they have that agreement.

15 Q In your testimony that you just referred to, you
16 stated the fact that we are of the opinion that the labor
17 agreements negotiated by Lake Central with certain unions are
18 not legally applicable to the employees of Lake Central when
19 they become employees of Allegheny.

20 May I inquire if that certain unions includes Air
21 Line Employees Association, International?

22 A Yes, it does.

23 Q On page 2 of your testimony, you state that Allegheny
24 intends to offer employment to all Lake Central employees to
25 the greatest extent feasible. Will that apply to the employees

EAN-19 1 of Lake Central represented by Air Line Employees Association?

2 A Yes, it does.

3 Q You anticipate that a considerable number of these
4 employees will be retained if the merger is completed?

5 A I do not anticipate that any of them would be termi-
6 nated. I think that they will be integrated into Allegheny in
7 toto.

8 Q Let me ask you this, sir. Do you have any plans at
9 the present time for a practical application of your opinion
10 that the labor agreements negotiated by Lake Central will not
11 be applicable to the employees of Lake Central when they become
12 employees of Allegheny?

13 A What do you mean by that? I don't understand your
14 question.

15 Q Do you have any plans at the present time for a
16 practical application of this opinion which you have stated
17 in your testimony?

18 A Again, I don't understand. What do you mean by a
19 practical application?

20 Q Do you intend to apply in any manner this opinion to
21 the operation of the joint employees of Allegheny and Lake
22 Central? In other words, what do you intend to do with respect
23 to this opinion?

24 A If I understand you correctly, it means that upon
25 the consummation and finalization of this merger that the

A--
orl 1 that the ground services and reservations personnel of Lake
2 Central Airlines will become Allegheny employees. The
3 affairs of these employees will be administered as
4 Allegheny has under the same policies Allegheny has followed
5 for the last 12 or 15 years.

6 It means further that we will not and do not
7 plan to recognize representation by the AEA of the people
8 of Allegheny Airlines.

9 Q In summary, then, would it be a fair statement.
10 to say that it is your present opinion to abrogate the
11 contract that Airlines Employees Association has with
12 Lake Central passenger and reservation employees?

13 MR. COLODNY: I object to that question. It
14 seems to me that is not the statement of what Mr. Barnes
15 has said. I ask Mr. Johnson to repeat it.

16 EXAMINER SHAPIRO: Would you repeat your question?

17 MR. JOHNSON: I said, would it be a fair summary
18 of what you just said to state as of this time you intend
19 to abrogate the contract between Airline Employees
20 Association and Lake Central covering the passenger
21 employees of Lake Central?

22 MR. COLODNY: I don't know what he means by
23 "abrogate" in this context.

24 EXAMINER SHAPIRO: Don't you think that the
25 witness by this time has pretty well established the

or2 1 position of the airline with respect to the employees?

2 In other words, isn't your question repetitious?

3 MR. JOHNSON: Possibly, if the question is
4 answered by Mr. Barnes's statement that the contract
5 will not be in effect, I am satisfied with that answer.

6 BY MR. JOHNSON:

7 Q Is that what you are saying?

8 A That is exactly what I said.

9 MR. JOHNSON: That is all.

10 EXAMINER SHAPIRO: Mr. Colboth, did you indicate
11 you had any questions?

12 MR. COLBOTH: They would be redundant, Mr. Examiner.
13 No questions.

14 EXAMINER SHAPIRO: Mr. Highsaw.

15 BY MR. HIGHSAW:

16 Q Mr. Barnes, I represent the International
17 Association of Machinists, who have a contract with
18 Allegheny. Am I to understand correctly from your
19 testimony when the merger became effective you would
20 integrate mechanics and related employees of Lake
21 Central into the same craft or class on Allegheny under
22 the collective bargaining agreement between the IAM and
23 Allegheny?

24 A That is correct. With the full application thereof
25 of the labor protective provisions, the same as all other

or3 1 groups.

2 Q. I take it you would sit down and carry on that
3 in discussions, in negotiations with the IAM representatives
4 if it was necessary to accomplish that purpose?

5 A. Yes, there would, I suppose, have to be an agreement
6 by the IAM as to the integration on a seniority basis of
7 the mechanics or maintenance employees of Lake Central. It
8 is our plan, as I think you are all aware, that there will
9 be such upward adjustments as are necessary in wages and
10 scales and benefits to make them consistent with Allegheny's,
11 which are generally superior to Lake Central's.

12 Q. Mr. Barnes, referring to Joint Exhibit 280 (revised),
13 there is a statement in there that it is apparent there
14 will be surplus employees during periods of time depending
15 on the function involved. Can you tell me at this time
16 whether there will be any surplus employees in the mechanic
17 craft or class after the merger is consummated?

18 A. No, I cannot. I have not made a study of that,
19 and I don't believe anybody else in the company has. I can
20 tell you this -- well, my answer stands.

21 Q. Reference is there made to the normal attrition
22 rate. Do you know what the normal attrition rate is among
23 your craft or class of mechanics?

24 A. No, I don't.

25 Q. On the matter of furloughs, I would understand

or4 1 from everything you said, if it should become necessary
2 to furlough any employees after the merger in the craft
3 or class of mechanics, this would be done in accordance
4 with the provisions of the IAM agreement covering furloughs,
5 is that correct?

6 A Any furloughs, should they become necessary, will
7 be done under the indices of the labor protective provisions,
8 which have been established by the Civil Aeronautics Board
9 and which we have indicated we will accept in this case.

10 Q And insofar as applicable, the IAM collective
11 bargaining agreement?

12 A Yes. I am not aware -- I believe that more often
13 than not that the so-called protective provisions are some-
14 what more stringent in the labor protective agreement than
15 they are as specified by the labor contracts.

16 MR. JOHNSON: That is all, Mr. Examiner.

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1 AFTERNOON SESSION

2 (2:00 p.m.)

3 EXAMINER SHAPIRO: Come to order, please.

4 Mr. Johnson, I understand you would like to present
5 your case at this time with the permission of counsel for
6 Allegheny, and I understand it is agreeable to them that you go
7 ahead and submit your material now.8 MR. JOHNSON: Yes, thank you, Mr. Examiner, and I
9 appreciate Mr. Colodny's courtesy.10 The Air Line Employees Association has an exhibit
11 which constitutes all of the case which we would present. This
12 exhibit I would like to have marked and then offer it in
13 evidence with this stipulation: Commencing on page 3 that
14 there be stricken from the exhibit all of the material which
15 is quoted as a letter, to the bottom of page 4. In other
16 words, the quoted material down to the last line on page 4.
17 So I am asking only that that part of the exhibit be received
18 on page 1, 2, the first part of page 3, and page 5.19 EXAMINER SHAPIRO: Very well. The exhibit referred
20 to will be marked as ALEA-A.

21 (The document referred to was marked

22 Exhibit ALEA-A, for identification.)

23 EXAMINER SHAPIRO: Since there has been no objec-
24 tion to the receipt of this exhibit in evidence, in accordance
25 with my notice of January 18, it will be received in evidence

1 by stipulation of the parties.

2 (The document referred to, heretofore
3 marked Exhibit ALEA-A, for identi-
4 fication, was received in evidence.)

5 MR. JOHNSON: Thank you, sir. That is the extent of
6 our case.

7 EXAMINER SHAPIRO: Very well.

8 Mr. Colodny, are you ready to resume with your case?

9 MR. COLODNY: Yes, sir. At this time I will call
10 Mr. Wigmore.

11 Whereupon,

12 R. F. WIGMORE

13 was called as a witness on behalf of applicants and, having
14 been first duly sworn, was examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MR. COLODNY:

17 Q Please state your name and position.

18 A My name is Robert F. Wigmore. I am Assistant Vice
19 President Economic Research, Allegheny Airlines.

20 Q Do you sponsor exhibits listed on the exhibit sponsor-
21 ship list under your name?

22 A I do.

23 Q Refer please to Exhibit T-5.

24 A I have it.

25 Q Do you have a correction to make on page 1 of that

el 8

1 will be February 29. The applicants and the Bureau have come
2 to an understanding that the Bureau will try to provide the
3 applicants with a statement of position as early as possible
4 before the 29th, but in any event, the parties will be in
5 touch with each other as to when that position will actually
6 be available.

7 Before closing, I believe it might be helpful to
8 make some comment to avoid a misunderstanding as to the scope
9 of the briefs on the labor contract issue which has been
10 raised by some of the unions.

11 At one point I sustained an objection by Mr. Colodny
12 to a question Mr. Sickles put to Mr. Barnes as to the legal
13 implications of Allegheny's position that it is not bound as
14 a legal matter to honor the labor contracts that Lake Central
15 now holds, once a proposed merger should take effect.

16 Now, my comment was that the point was a matter
17 for brief, is about all I said at the time, but I think I
18 got the impression from something that was said in the course
19 of the hearing that there was some misunderstanding.

20 So all I meant at the time, I'm saying now, was
21 that the point could be briefed, but only insofar as it was
22 relevant to the issues and specifically the question of what,
23 if any, conditions should be imposed. Specifically, any labor
24 protective conditions.

25 I don't contemplate the parties getting into a

1 general discussion as to the legal affects of contracts, and
2 whether the Board should do this, that or the other about
3 the contracts.

4 The question is what the labor protective provisions
5 are and the conditions that might be applicable.

6 With those comments, then, the record will be
7 kept open until February 9 for the receipt of the additional
8 exhibits, and the hearing is now adjourned.

9 (Whereupon, at 5:00 p.m., the hearing in the
10 above-entitled matter was adjourned.)

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Labor Act, as amended. Petitioner is the duly elected and qualified bargaining agent for the fleet and passenger service employees in the service of Lake Central Airlines, Inc. and has entered into an employment agreement with such carrier, which said agreement regulates the matters of wages, hours, conditions of service, seniority, promotions, scheduling, vacations, transfers, the adjudication of grievances and other matters customary in such agreements in the air transportation industry.

"2. By Joint Application of Allegheny Airlines, Inc. and Lake Central Airlines, Inc. For Approval of Merger and Transfer of Certificate which Application is dated October 20, 1967, the joint petitioners, pursuant to Sections 408 and 401 of the Federal Aviation Act of 1958, as amended, and such other provisions of the Act as may be found applicable, applied to the Civil Aeronautics Board for approval of an agreement of merger (attached to the Joint Application as Appendix A) pursuant to which agreement of merger Lake Central will be merged into Allegheny with Allegheny being the surviving carrier under the name of Allegheny Airlines, Inc. In support of the Application the carriers cited a number of facts relating to their route certificates, corporate status, agreed terms of contract and reasons supporting the proposed merger.

"4. On or about the 1st day of November, 1966, the Petitioner, Air Line Employees Association, International, as collective bargaining agent for the fleet and passenger service employees in the service of Lake Central Airlines, Inc. entered into an agreement with Lake Central Airlines, Inc. The said agreement contains all of the terms and

conditions of employment of the said fleet and passenger service employees employed by Lake Central Airlines, Inc., including a recognition clause, a purpose clause, a scope clause, a status clause, definition provisions, hours of service provisions and seniority provisions, holidays and vacations provisions, provisions relating to sick leave, leaves of absence and vacancies, investigation and discipline provisions, wage provisions and other miscellaneous matters. The agreement further contains material relating to the establishment and maintenance of a System Board of Adjustment. The said agreement is presently in full force and extends to February 1, 1970. It covers approximately 425 of Lake Central's employees classified as follows: Assistant Station Manager, Chief Agent, Lead Agent, Relief Agent, Station Agent, Cargo Agent, Forms Agent, Ticket Agent, Reservations Agent, Ramp Service Agent and Baggage Agent. The merger of Lake Central and Allegheny would affect each of these 425 employees. They have a direct interest in this matter in that presumably they will be utilized by the eventual merged carrier. It is not the intent or purpose of the Petitioner, on the basis of its present information, to oppose the aforementioned application. Rather, Petitioner states to the Civil Aeronautics Board that in the event of the approval of the application, the Petitioner would seek the consideration of the Board in granting the application with the usual labor protective provisions covering those fleet and passenger service employees presently in the service of Lake Central Airlines, Inc., as represented by the Petitioner.

"5. Allegheny Airlines, Inc. employs approximately 1100 to 1200 employees in the entire craft and class of clerical, office, fleet and passenger service employees. These employees are unorganized, meaning they are not

represented by any collective bargaining agreement. Since the United-Capital Merger, the CAB routinely has included standard labor protective provisions in its orders approving mergers. Petitioner, in a number of recent cases, has sought these labor protective provisions and has not asked for modifications or revisions in the merger proceedings. However, inasmuch as the labor protective provisions by and large safeguard affected employees against loss of income and do not concern other aspects of the industrial relations problems involved with mergers, the Petitioner has considerable experience in attempting to handle in negotiations such problems as organized versus unorganized employees in merged carriers and two or more unions representing the same class and craft of employees. To date negotiations have not provided the answer to these problems which arise in every merger. Therefore, in applying for leave to intervene in this case, Petitioner respectfully shows to the Board that it intends to seek guidelines by the Board with respect to the integration of the organized and unorganized groups here involved in the craft and class of clerical, office, fleet and passenger service employees of Lake Central. It is the intent of the Petitioner to suggest to the Board, as a condition of the merger, that the Petitioner's contract be governing insofar as is concerned the entire craft and class of the merged carrier. Further, it is the intention of the Petitioner to seek information as to the position of management with respect to this request. Therefore, Petitioner states to the Board that it will reserve its right to consent to or contest the merger on the basis of information developed along the lines mentioned hereinabove during the progress of the merger proceedings."

craft and class is unorganized on Allegheny and on the merged carrier the unorganized employees will outnumber the ALEA represented employees by approximately 2½ to 1.

"Allegheny historically has given each year to its employees raises and fringe benefits to bring such employees' employment standards to those of organized groups. In my opinion the purpose of this has been to keep Allegheny's unorganized group in status quo.

"At the present time the wage scales of the prospective groups of employees in the same class and craft on Lake Central and Allegheny are comparable.

* * *

"Therefore, it is my position in this case, as a condition of the merger, that the ALEA contract be determined as governing for the entire group of employees involved on the merged carrier. Until such time as the contract expires it should affect all of this class and craft equally and not simply the former employees of Lake Central."

In Mr. Barnes' testimony, it was stated as follows:

"* * * The fact that we are of the opinion that the labor agreements negotiated by Lake Central with certain unions are not legally applicable to the employees of Lake Central when they become employees of Allegheny, should not be construed in any way to alter this policy. Any group of Allegheny employees is, of course, free to seek a representation election under the Railway Labor Act, and Allegheny will deal with any unions so recognized in the normal course of business." (Underscoring ours.)

Obviously, the written testimony of Mr. Barnes placed ALEA in an entirely different position with respect to the merger than the matters which had theretofore been stated as set forth in the various documents set forth hereinabove. Upon receipt of the testimony of Mr. Barnes' ALEA's position became the same as that of Air Line Dispatchers Association, another intervenor in the case, which position was stated by ALDA in its letter of December 13, 1967, as follows:

"Initially ALDA did not oppose the proposed merger assuming appropriate Labor Protective Provisions are imposed.

"On November 30th, Allegheny Airlines suggested that as of the effective date of the merger the collective bargaining agreement between Lake Central Airlines and ALDA would cease to exist.

"Such a suggestion is contrary to the decisions of appropriate federal courts. If the merged carrier persists in its contentions, ALDA must of necessity oppose the merger inasmuch as the merged carrier has indicated a willingness to blatantly disregard contractual obligations."

Thus, at the time of hearing ALEA considered it necessary to cross examine Mr. Barnes for the purpose of clarifying the position with respect to abrogation of existing collective bargaining agreements with Lake Central

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Thus, at the time of hearing ALEA considered it necessary to cross examine Mr. Barnes for the purpose of clarifying the position with respect to abrogation of existing collective bargaining agreements with Lake Central

employees. The dialogue between Mr. Barnes and counsel for ALEA resulted in the following questions and answers:

"Q Mr. Barnes, you are familiar, I take it, from what you said, with the fact that Lake Central has a collective bargaining agreement for its fleet and passenger service employees with the Air Line Employees Association, International, as reflected in Joint Exhibit 120.

"A Yes, I am familiar they have that agreement.

"Q In your testimony that you just referred to, you stated the fact that we are of the opinion that the labor agreements negotiated by Lake Central with certain unions are not legally applicable to the employees of Lake Central when they become employees of Allegheny.

"May I inquire if that certain unions includes Air Line Employees Association, International?

"A Yes, it does.

"Q On page 2 of your testimony, you state that Allegheny intends to offer employment to all Lake Central employees to the greatest extent feasible. Will that apply to the employees of Lake Central represented by Air Line Employees Association?

"A Yes, it does.

"Q You anticipate that a considerable number of these employees will be retained if the merger is completed?

"A I do not anticipate that any of them would be terminated. I think that they will be integrated into Allegheny in toto.

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"Q Let me ask you this, sir. Do you have any plans at the present time for a practical application of your opinion that the labor agreements negotiated by Lake Central will not be applicable to the employees of Lake Central when they become employees of Allegheny?

"A What do you mean by that? I don't understand your question.

"Q Do you have any plans at the present time for a practical application of this opinion which you have stated in your testimony?

"A Again, I don't understand. What do you mean by a practical application?

"Q Do you intend to apply in any manner this opinion to the operation of the joint employees of Allegheny and Lake Central? In other words, what do you intend to do with respect to this opinion?

"A If I understand you correctly, it means that upon the consummation and finalization of this merger that the ground services and reservations personnel of Lake Central Airlines will become Allegheny employees. The affairs of these employees will be administered as Allegheny has under the same policies Allegheny has followed for the last 12 or 15 years.

"It means further that we will not and do not plan to recognize representation by the ALEA of the people of Allegheny Airlines.

"Q In summary, then, would it be a fair statement to say that it is your present opinion to abrogate the contract that Airlines Employees Association has with Lake Central passenger and reservation employees?

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JA-133

"MR. COLODNY: I object to that question. It seems to me that is not the statement of what Mr. Barnes has said. I ask Mr. Johnson to repeat it.

"EXAMINER SHAPIRO: Would you repeat your question?

"MR. JOHNSON: I said, would it be a fair summary of what you just said to state as of this time you intend to abrogate the contract between Airline Employees Association and Lake Central covering the passenger employees of Lake Central?

"MR. COLODNY: I don't know what he means by 'abrogate' in this context.

"EXAMINER SHAPIRO: Don't you think that the witness by this time has pretty well established the position of the airline with respect to the employees? In other words, isn't your question repetitious?

"MR. JOHNSON: Possibly, if the question is answered by Mr. Barnes's statement that the contract will not be in effect, I am satisfied with that answer.

"BY MR. JOHNSON:

"Q Is that what you are saying?

"A That is exactly what I said.

"MR. JOHNSON: That is all."

It is of little significance to discuss applicable labor protective provisions if Allegheny is successful in having the CAB approve this merger in light of the announced

intention of Allegheny to refuse to recognize representation by ALEA of Lake Central employees and to refuse to recognize the existence of the ALEA-Lake Central contract.

On the other hand, it is understandable that the Hearing Examiner in this case feels he is without jurisdiction to determine questions of contract inasmuch as such questions ordinarily would be subject to the jurisdiction of appropriate courts of law. However, there is a fallacy inherent in this viewpoint which operates to the benefit of Allegheny and to the detriment of ALEA. There is no doubt whatever that ALEA has a valid and existing contract with Lake Central and that its contract provides, in part, as follows:

"(c) The provisions of this Agreement shall be binding upon any successor or merged Company or Companies, or any successor in the control of the Company."

It is not necessary for the Hearing Examiner to construe the question of existence of a contract. It might be said that the Hearing Examiner is herein called upon to construe the affect of Section 29 (c) insofar as is concerned the merged company or the successor, namely, Allegheny. However, by refusing to recognize the existence of the

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contractual question, the Hearing Examiner, in effect, is determining a contractual question in favor of Allegheny. He must necessarily do this if he accepts the view of Allegheny that only labor protective provisions are of consequence and that the contract is of no force and effect.

It is respectfully suggested that if the Hearing Examiner is really of the opinion that he is without jurisdiction to determine contractual questions, he should eliminate a consideration of labor protective provisions since the application of any such provisions herein must, of necessity, be based upon the viewpoint of Allegheny that a valid contract does not exist and that the language of Section 29 (c) is meaningless insofar as Allegheny is concerned.

ALEA does not believe that such a position reflects the intent of the Hearing Examiner since it amounts to nothing more than an ostrich-like head in the sand position with respect to a vital issue of the case. To determine arbitrarily that some 425 employees of Lake Central shall be deprived of their contractual rights by Allegheny without right to be heard is an application of labor protective provisions never before utilized by the CAB and is a totally

new concept in the application of the jurisdiction of the CAB in merger proceedings.

ALEA categorically opposes the merger of these carriers under such circumstances. Such a proceeding is in direct contravention of the public interest and further goes to the very roots of the American system of jurisprudence by arbitrarily disregarding the rights of contract on the "opinion" of a third party not concerned in any way with the making of the contract or a contractual duration period thereof. This is not to say that Allegheny is not concerned with the contract as the successor-carrier in the merger. Obviously, such is the case. However, it is a complete disruption of all recognized procedures to permit Allegheny to expressly disregard an existing contract on the sole ground that the Hearing Examiner is without contractual jurisdiction in this case. ALEA reiterates that the imposition of labor protective provisions herein in view of the expressed intent of Allegheny constitutes a determination by the Hearing Examiner and the CAB of a contractual position expressed by Allegheny and thus assumes the very jurisdiction that the Hearing Examiner proposes to disavow.

Assuming arguendo that the position of Allegheny

is correct and that the Hearing Examiner and the CAB have proper jurisdiction to impose labor protective provisions despite the announced intent of Allegheny to refuse to recognize existing contracts, ALEA poses the following question: Can labor protective provisions be imposed here without affecting the current contractual rights of Lake Central employees? ALEA believes that this question answers itself and reflects the utter incongruity of a disavowal of jurisdiction by the CAB on the one hand and the attempted imposition of labor protective provisions on the other hand.

Pending further inquiry by the CAB into the intentions of Allegheny as expressed by its President with respect to existing Lake Central contracts, ALEA suggests that this merger can not be approved and no labor protective provisions heretofore utilized by the CAB in merger proceedings can be applied without assumption of jurisdiction impliedly felt by the Hearing Examiner to be beyond the scope of the CAB.

Respectfully submitted,


Wyatt Johnson, General Counsel
Air Line Employees Association,
International

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

ALLEGHENY-LAKE CENTRAL MERGER CASE

DOCKET 19151

INITIAL DECISION OF EXAMINER MILTON H. SHAPIRO

Served: APR 26 1968

Upon:

Edwin I. Colodny, Allegheny Airlines, Inc., National Airport, Washington, D. C. 20001, for Allegheny Airlines, Inc.

Albert F. Grisard, 412 Metropolitan Bank Building, Washington, D. C. 20005, for Lake Central Airlines, Inc.

Alfred V. J. Prather, 1707 L Street, N.W., Washington, D. C. 20036, for American Airlines, Inc.

James M. Verner, 1875 Connecticut Avenue, N.W., Washington, D. C. 20009, for Northwest Airlines, Inc.

Joseph Paul, One Farragut Square South, Washington, D. C. 20006, for Trans World Airlines, Inc.

Joseph A. Sickles, 4720 Montgomery Lane, Bethesda, Maryland 20014, for the Air Line Dispatchers Association.

Wyatt Johnson, Suite 509, 100 Biscayne Tower, Miami, Florida 33132, for the Air Line Employees Association, International.

Gary Colboth, 5440 South Cicero Avenue, Chicago, Illinois 60638, for the Air Line Pilots Association, International.

James L. Highsaw, Jr., 620 Tower Building, Washington, D. C. 20005, for the International Association of Machinists and Aerospace Workers.

Donald M. Murtha, 1009 Tower Building, Washington, D. C. 20005, for the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Airlines Division.

Albert F. Beitel, 905 American Security Building, Washington, D. C. 20005, for the Akron-Canton (Ohio) Regional Airport Authority.

Thomas S. Haney, 613 Second National Building, Akron, Ohio 44308, for the Chambers of Commerce of Akron, Alliance, Canton, and Massillon, Ohio.

Roy Pulsifer, Civil Aeronautics Board, Washington, D. C. 20428, for the Bureau of Operating Rights.

This initial decision is rendered pursuant to the authority delegated to examiners under Rule 27 of the Rules of Practice in Economic Proceedings. It becomes effective as the final order of the Board 30 days after service thereof unless a petition for discretionary review is filed within 25 days after service thereof in accordance with Rule 28 or the Board issues an order within said 30-day period to review upon its own initiative. If a petition for discretionary review is timely filed or action to review is taken by the Board upon its own initiative, the effectiveness of this initial decision is stayed until further order of the Board.

TABLE OF CONTENTS

	<u>Page</u>
Map	
STATEMENT OF THE PROCEEDING	1
GOVERNING STATUTORY PROVISIONS	1
POSITIONS OF THE PARTIES	2
THE MERGER NEGOTIATIONS AND TERMS	5
OWNERSHIP AND CONTROL OF THE APPLICANTS AND SURVIVING COMPANY	7
THE PUBLIC INTEREST CONSIDERATIONS	8
Integration of the Applicants' Systems	9
Service Improvements	11
The Effect of the Merger on Subsidy Need	13
The forecasts of initial operating results	13
Forecasts of traffic and revenues	15
Participation estimates	16
Connecting ratios	18
Other traffic and revenue adjustments	22
Forecasts of cost changes	26
General and administrative expenses	26
Legal fees	28
Training costs for pilots and mechanics	29
Standardization of aircraft exteriors and ground equipment	31
Lake Central's net operating loss carryover	32
Conclusion	35
The Consideration for the Merger	37
Monopoly and Restraints on Competition	40
Diversion from Other Carriers	40
The Impact on the Applicants' Employees	41

TABLE OF CONTENTS

	<u>Page</u>
LAKE CENTRAL'S EXEMPTION AUTHORITY AND SINGLE-PLANE RESTRICTIONS	50
CONDITIONS OF APPROVAL	52
SUMMARY OF FINDINGS AND CONCLUSIONS	53

Appendices

Appendix A - Comparison of Separate Carrier and Merged
Carrier Operations

Appendix B - Examiner's Forecast for the Merged Operation

Appendix C - Summary—Subsidy Need Impact of the Merger

Appendix D - Net Changes in Operating Profit Due to
Through Services

Appendix E - Estimates of Cost Changes

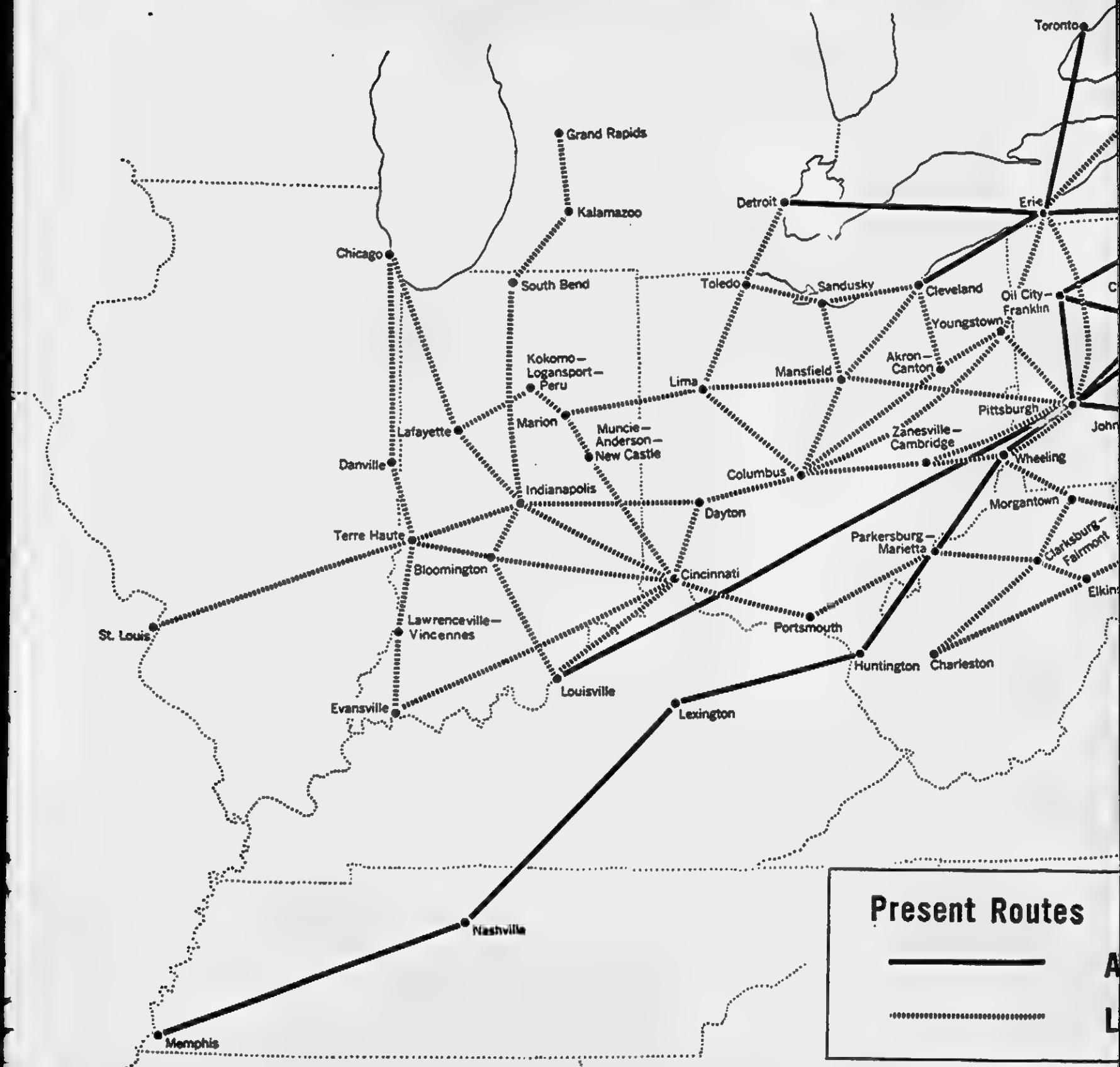
Appendix F - New Through Services; Passenger, Passenger-Mile
and Revenue Forecast

Order

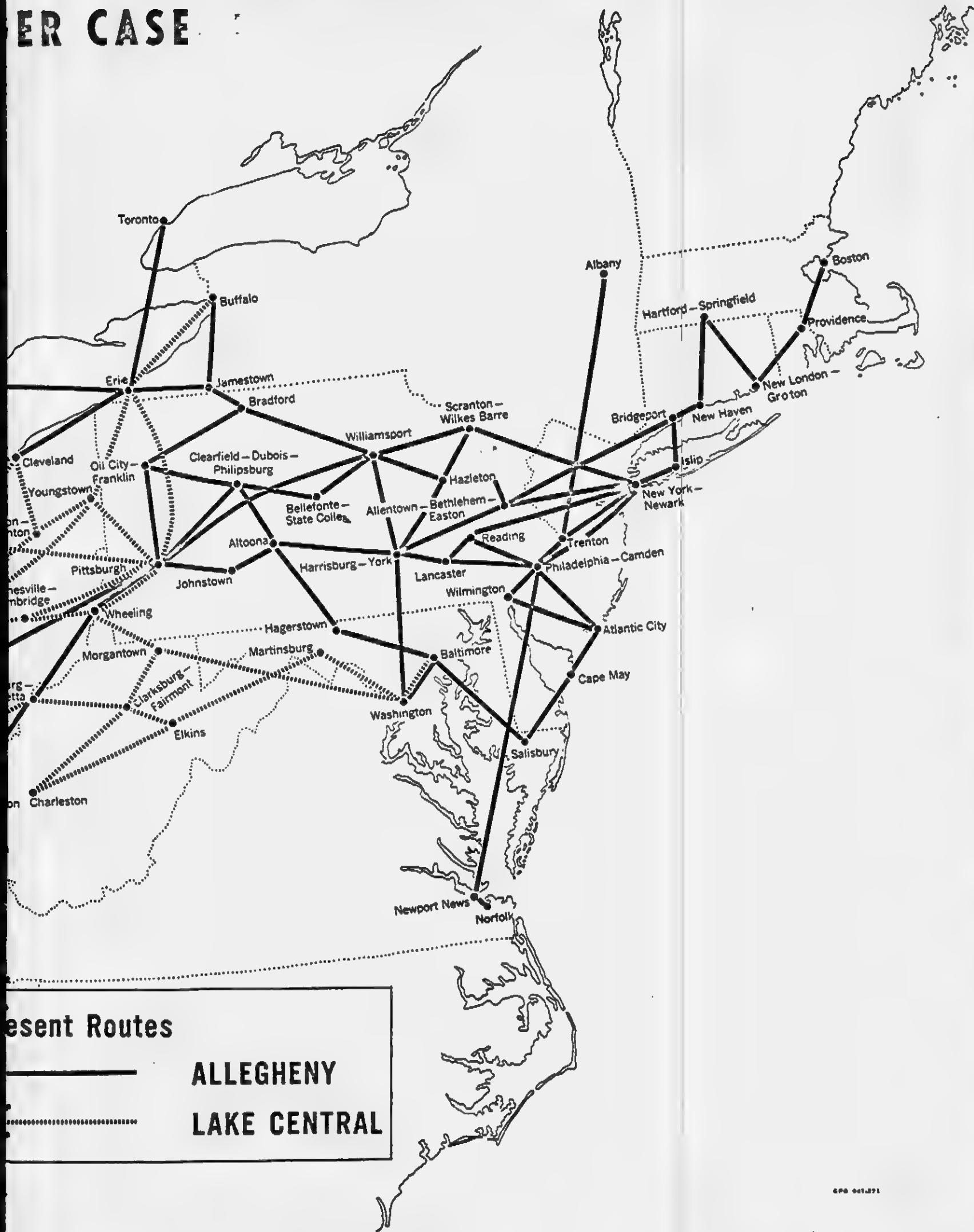
ALLEGHENY-LAKE CENTRAL MERGER CASE

DOCKET 19151

COMBINED ROUTE SYSTEM



ER CASE



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JA-143

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

ALLEGHENY-LAKE CENTRAL MERGER CASE

DOCKET 19151

Found that the merger of Allegheny Airlines, Inc., and Lake Central Airlines, Inc., is in the public interest and should be approved subject to certain conditions.

Appearances:

Edwin I. Colodny and William L. Howard for Allegheny Airlines, Inc.

Albert F. Grisard for Lake Central Airlines, Inc.

James M. Verner for Northwest Airlines, Inc.

Joseph Paul for Trans World Airlines, Inc.

Joseph A. Sickles for the Air Line Dispatchers Association.

Wyatt Johnson for the Air Line Employees Association, International.

Gary Colboth for the Air Line Pilots Association, International.

James L. Highsaw, Jr., for the International Association of Machinists and Aerospace Workers.

Donald M. Murtha for the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Airlines Division.

Albert F. Beitel for the Akron-Canton (Ohio) Regional Airport Authority.

Thomas S. Haney for the Chambers of Commerce of Akron, Alliance, Canton, and Massillon, Ohio.

Harry A. Bowen for Allentown-Bethlehem-Easton, Pa., under Rule 14.

Roy Pulsifer for the Bureau of Operating Rights.

INITIAL DECISION OF EXAMINER MILTON H. SHAPIROSTATEMENT OF THE PROCEEDING

Allegheny Airlines, Inc. (Allegheny) and Lake Central Airlines, Inc. (Lake Central), Delaware corporations, have filed a joint application requesting approval of the agreement which they entered into on October 18, 1967, by which Lake Central would be merged into Allegheny, the latter to be the surviving carrier, and also requesting approval of the transfer of Lake Central's certificate of public convenience and necessity for route 88 to Allegheny. The merger agreement was amended by a supplement dated January 23, 1968.

Interested parties have been granted leave to intervene.^{1/} After notice, a public hearing has been held and briefs have been filed.^{2/}

GOVERNING STATUTORY PROVISIONS

The joint application of the carriers is subject to the provisions of sections 102, 401(h), and 408 of the Federal Aviation Act, as amended. Section 401(h) provides that no certificate of public convenience and

1/ Air Line Dispatchers Association (ALDA); the Air Line Employees Association, International (ALEA); the Air Line Pilots Association, International (ALPA); the International Association of Machinists and Aerospace Workers (IAMAW); the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Airlines Division (Teamsters); American Airlines, Inc.; Northwest Airlines, Inc.; Trans World Airlines, Inc.; the Akron-Canton Regional Airport Authority and the Chambers of Commerce of Akron, Alliance, Canton, and Massillon, Ohio (Akron-Canton parties).

2/ Briefs or statements of position have been filed by the applicants, the Bureau of Operating Rights (Bureau), Allentown-Bethlehem-Easton Metropolitan Area, the Akron-Canton parties, ALDA, ALEA, ALPA, IAMAW, and the Teamsters. The air carrier intervenors have not taken a position.

cessity may be transferred unless such transfer is approved by the Board as being consistent with the public interest. Section 408 states that any merger of air carriers is unlawful unless approved by the Board. Section 408(b) provides that unless after hearing the Board finds that a merger will not be consistent with the public interest, it shall by order approve it on such terms and conditions as it finds reasonable, provided further, that the merger shall not be approved if it would result in creating a monopoly or monopolies and thereby restrain competition or jeopardize another air carrier not a party to the merger.

The term "public interest", as used in the various sections referred to, is directly related to the objectives of section 102 of the Act. These objectives are the sound development of an adequate, economical, and efficient air transportation system properly adapted to the present and future needs of the foreign and domestic commerce of the United States, of the postal service, and of the national defense. The differences in language in these sections, involving in one instance affirmative findings as to the public interest and in the other negative findings, have been held by the Board to have little practical effect since the public interest is deemed to be the primary consideration in each section.^{3/}

POSITIONS OF THE PARTIES

The Applicants:

The proposed merger will be consistent with the public interest, will not result in a monopoly or monopolies and thereby restrain competition or

^{3/} United-Western, Acquisition Air Carrier Property, 8 C.A.B. 298, 301 (1947).

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JA-146

jeopardize another carrier not a party to the merger, and should be approved subject to appropriate conditions. The merger is fair from the standpoint of the shareholders of both companies. The ratio governing the exchange of stock was arrived at after arm's length bargaining. The net economic impact of the merger will be a reduction in subsidy need of \$84,000 during the first year of merged operations. But there will be a long-range favorable impact on operating profits from increased revenues combined with greater economies of operation. Under the present Class Rate IV formula, however, payments to the merged carrier would be reduced by \$369,000 because of the merger. An ancillary rate proceeding should be instituted to adjust the Class Rate IV payments to Allegheny consistent with the findings herein. The conditions to be imposed should include the labor protective provisions imposed by the Board in the United-Capital Merger Case.^{4/}

The Labor Organizations:

ALDA and ALEA oppose the merger because of Allegheny's position that it will not assume the obligations of Lake Central's contracts with those unions. They request that if the Board does approve the merger, it impose as a condition that Allegheny as the surviving company abide by the terms of Lake Central's contracts with the unions. ALEA also requests as a condition of the merger that the ALEA contract with Lake Central govern all employees of the surviving company in the same class and craft and not

4/ 33 C.A.B. 307 (1961).

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simply former employees of Lake Central. ALDA seeks a number of revisions in the labor protective provisions adopted in the United-Capital Merger Case.

ALPA asks that if the Board approves the merger, it should add a section to the labor protective provisions directing the surviving carrier and the union to commence good faith negotiations to combine, merge, or amalgamate the various existing collective bargaining agreements for each class or craft of employees within 30 days of the Board order approving the merger. IAMAW requests that if the merger is approved, the labor protective provisions of the United-Capital Merger Case, as amended, be adopted as a condition.

In addition to asking for certain specific revisions of the labor protective provisions in the United-Capital Merger Case, the Teamsters contend that the order approving the proposed merger should be broad enough to preserve the representation rights of the Teamsters and other unions similarly situated pending procedures to establish representation rights of the Teamsters.

The latter three unions do not oppose the merger.

The Civic Interests:

The Akron-Canton parties support the merger, but believe that the Board should retain continuing jurisdiction so as to insure them of the service which the applicants propose to offer on a merged basis. Allentown-Bethlehem-Easton, a Rule 14 participant, favors the merger and the prospect of "first real service" to St. Louis, Indianapolis, Cincinnati, Louisville, Dayton, and Columbus.

The Bureau:

The proposed merger should be approved as in the public interest. Allegheny, a stable and well-managed carrier, would take over Lake Central, a carrier with recent severe losses and equipment and management problems which have resulted in a cutback of service. Allegheny will be able to serve Lake Central's routes efficiently and well. New single-carrier and through-plane service improvements will follow from the merger, and the first year of combined operations will produce a \$1 million reduction in subsidy need. Eventually, the merged carrier will provide extensive new through-plane service between points on the respective systems, will generally upgrade existing service, and will become subsidy-free. All Lake Central's employees will be covered by the United-Capital labor protective provisions, while many will receive higher wages.

THE MERGER NEGOTIATIONS AND TERMS

The possibility of a merger of Allegheny and Lake Central has been discussed by representatives of the two companies for several years. It was not until control of Lake Central changed hands in 1966 that material progress was made toward an actual merger. However, talks were suspended until after both companies completed the respective financing programs they then contemplated.

Allegheny's financing was completed in April 1967 and Lake Central's in June 1967. Negotiations were resumed in August 1967 and to a large extent focused on the ratio of exchange of stock of the two companies. The ratio agreed upon in the original agreement of merger of October 18, 1967, was an exchange of 0.5 Allegheny share for each Lake Central share of common stock.

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owever, when the September and October financial statements of Lake Central became available, they disclosed a need for additional working capital. More capital was obtained by the sale of (a) \$500,000 of common stock in November 1967 to Perry R. Bass and his associates, (b) 100,000 shares of common stock and 25,000 common stock purchase warrants for \$600,000 to Central Securities, Inc., and (c) 200,000 shares of common stock and 50,000 common stock purchase warrants for \$1,200,000 to Bessemer Securities Corporation. The sales to the two corporations occurred on January 15, 1968. These funds are intended to cover the working capital needs of Lake Central through June 30, 1968. Mr. Bass and his associates have advised Lake Central that if additional working capital is needed before June 30, 1968, they are prepared to exercise common stock purchase warrants to provide up to \$500,000 more.

The additional Lake Central financing led to further meetings between the representatives of the two carriers in late December and early January. At these meetings a new stock exchange ratio was arrived at providing for the conversion, as of the effective date of the merger, of each share of Lake Central common stock into 0.44 of one share of the common stock of the surviving company and of each share of Lake Central preferred stock into 1.17 shares of the common stock of the surviving company.

Under the terms of the merger, Allegheny and Lake Central will be combined into a single corporation which will be known as Allegheny Airlines, Inc., the surviving corporation. Allegheny's board of directors will then consist of 21 members, made up of 11 present directors of Allegheny and 9 present directors of Lake Central. There will be one new director,

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Perry R. Bass. The chairman of the board of directors of the new company is to be Henry A. Satterwhite, now chairman of the board of directors of Allegheny. The president and chief executive officer is to be Leslie O. Barnes, now the president of Allegheny. L. Thomas Ferguson, president of Lake Central, will become senior vice president-planning and development, of the surviving company.

OWNERSHIP AND CONTROL OF THE APPLICANTS
AND SURVIVING COMPANY

According to the applicants, Perry R. Bass of Ft. Worth, Texas, may be deemed to have obtained control of Lake Central as a result of the acquisition by him and his associates between September 1965 and March 1967 of approximately 25 percent of the issued and outstanding shares of common stock of Lake Central. The same Bass interests own about 121,000 Allegheny shares which constituted about 6.6 percent of the carrier's total outstanding common stock as of November 1967. In addition, the Bass interests have warrants for the purchase of 41,000 shares of Allegheny common stock. These warrants represent 5.32 percent of the total, unexercised warrants which relate to 770,000 shares. If all outstanding warrants were exercised, the relative size of the Bass ownership in Allegheny would be diminished.

While the Bass interests own more Allegheny stock than any other individual stockholder, the C.A.B. reports show that in 1966 Allegheny's officers and directors together owned about 8 percent of the total outstanding shares. Various investment houses own stock in both companies. As of November 15, 1967, one held shares equivalent to 9.07 percent of the total outstanding stock in Allegheny, but management states it does not know the beneficial

mers of these holdings. Allegheny's management believes that the shares held by brokers are for the benefit of many owners and that there is small likelihood that any single beneficial owner holds in broker accounts percent of the outstanding stock.

Two directors of Lake Central are affiliates of Mr. Bass and will represent him on the board of directors of the surviving company. However, the evidence supports the finding that the Bass interests have not been represented and are not currently represented on the Allegheny board of directors. Thus, no appointments to the Allegheny board of directors have been made since 1964, and Allegheny states that no representative of the Bass group is presently serving on the Allegheny board. In addition, Allegheny's president testified that he was convinced that the Bass group's ownership in Allegheny does not constitute control of Allegheny "by any stretch of the imagination". In view of the foregoing and the evidence of record, there is no basis for a finding that the Bass interests have either exercised control or have the power to exercise control of Allegheny. In fact, there is no evidence as to what, if any, ownership in Allegheny has the power to exercise control.^{5/}

THE PUBLIC INTEREST CONSIDERATIONS

The determination of whether the proposed merger is in the public interest turns on several major considerations, namely, whether the merger will result in an integrated and coordinated system; will offer improved services; will make possible economies of operation and a reduction in

^{5/} After the merger, Mr. Bass and his associates will own about 14 percent of the common stock of the surviving company.

9.

subsidy need; whether the price is reasonable and was arrived at after arm's length bargaining and without fraud, collusion, or coercion; will result in creating a monopoly or have a restraining effect on competition or jeopardize other air carriers; and whether and in what way, if any, it will affect the employees of the companies involved.

Integration of the Applicants' Systems -

Allegheny schedules service in 12 states, the District of Columbia, and Canada (Toronto) over a network reaching from Boston, Mass., in the northeast, southward along the Atlantic Coast to Norfolk, Va., and as far west as Memphis, Tenn. (See accompanying map.)

As of January 1968, Allegheny operated 49 aircraft which included 6 DC-9-30's, 33 CV-580's, and 10 F-27J's. All of these aircraft are owned except for 3 DC-9-30's which are leased for a 12-year term. The carrier also has on order 6 DC-9-30 aircraft scheduled for delivery by September 1968. It has been negotiating for the lease of 3 of the DC-9 aircraft which are on order, and has options to purchase 6 more DC-9-30's.

Lake Central's operations cover 10 states and the District of Columbia, within the area of Chicago, Ill., and St. Louis, Mo., on the west, Baltimore, Md., and Washington, D. C., on the east, Buffalo, N.Y., on the north, and Evansville, Ind., on the south.

Lake Central operated a fleet of 23 aircraft in January 1968, composed of 10 CV-580's, 1 CV-340, and 12 Nord N-262 aircraft. All are owned by Lake Central except the CV-340, which is leased, and is to be sold because it is no longer needed. Besides the aircraft in its operating fleet,

1234

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Lake Central owns 11 DC-3's which were removed from service in December 1967. These are to be sold "as soon as may be practicable".

Allegheny is one of the largest local service air carriers, while Lake Central is one of the smallest. During the year ended June 30, 1967, Allegheny had the largest number of ton-miles, passenger revenue-miles and originating passengers of all the local service air carriers. On the other hand, Lake Central was at the bottom or near the bottom of the rankings in these areas of performance. These differences are also reflected in the financial records of the two companies. While Allegheny reduced its dependence on subsidy support by \$1 million during the 5 years ended in 1966, Lake Central reduced its subsidy need by only \$237,000 during the same period. In addition, during the 9 months ended September 30, 1967, Lake Central sustained a net loss of \$3,200,000 which necessitated the sales of stock to obtain working capital referred to above.

Both carriers now serve nine points in common,^{6/} and if joined, would permit single-carrier service from such major traffic centers on Lake Central's system as Chicago and St. Louis, on the west, to principal cities on Allegheny's system along the eastern seaboard. In view of the foregoing and the evidence of record, it is found that the merger will result in an integrated and coordinated system.

The way in which the applicants intend to exploit the potential of the merged system for service improvements is considered below.

^{6/} Baltimore, Buffalo, Cleveland, Detroit, Erie, Parkersburg, Pittsburgh, Washington, and Wheeling.

1235

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Service Improvements -

Allegheny's pattern for the initial year of service contemplates improvements comprising new competitive services, first single-plane service, and upgrading of service with better equipment. According to the applicants, two main considerations determined the pattern of through service that would be operated during the first year of the merged carrier's operations. These were the fleet size and composition of the two carriers and the existing certificate authority. They also contend that the proposed pattern has been developed on the basis of existing schedules of each of the carriers projected for 1968 with some additional mileage using existing Lake Central route authority where it can be put to advantage.

The applicants argue that the proposed schedules provide a maximum of new through services with a minimum of added miles. They consider Baltimore, Cleveland, and Erie as the joint stations which afford the best chance to integrate service on the two systems. Among proposed service improvements is a combination of Allegheny's present Boston-Baltimore nonstop authority with Lake Central's Baltimore-Cincinnati/Indianapolis authority, thus providing new competitive single-plane service in the Boston-Cincinnati and Boston-Indianapolis markets.

Another improvement which the applicants are projecting is a combination of Allegheny's New York-Baltimore service with Lake Central's authority for service between Baltimore and Charleston, W. Va. This proposal would also bring new competitive service in the New York-Charleston market. Similarly, by combining the Allegheny authority between Toronto and Erie

238

12.

ith Lake Central's authority to serve Erie and Pittsburgh, the merged carrier
ould be able to bring competitive, single-plane service to the Toronto-
Pittsburgh market.

The record contains proposed schedules intended to provide 18 daily
through flights with new services to cities on both carriers' systems, in-
cluding first single-plane service in 7 markets, the addition or improvement
of service in 11 markets, and the institution of new competition between
pairs of points.^{7/}

The Bureau has questioned whether the applicants' proposals will fully
exploit the potential of the new system during the initial period of opera-
tions. It points to 20 major markets not scheduled for through service,
although it could be provided under the certificated authority of the com-
bined carriers. It also cites the written testimony of Allegheny's president
that there are several Lake Central markets which could offer additional
venues when Allegheny has the equipment time available to add service.
For example, he gave the Baltimore-St. Louis and Buffalo-Indianapolis/
St. Louis markets, but added that the merged carrier intended to develop
the service in those markets on the Lake Central system which they consider
capable of sustaining added service.

There is a conflict in the record between the written testimony of
Allegheny's president and his testimony on cross-examination as to the role

^{7/} First single-plane service is projected in the following markets:
Bradford-Columbus; Jamestown-Columbus; Jamestown-Cincinnati; Toronto-
Columbus; Toronto-Cincinnati; Philadelphia-Morgantown; and Philadelphia-
Clarksburg. New competitive through service will be provided in the Boston-
Cincinnati, Boston-Indianapolis, Charleston-La Guardia, and Pittsburgh-
Toronto markets.

13.

the availability of equipment has actually played in the projections. On cross-examination he stated flatly that the failure to project single-plane services in the 20 markets referred to above was "not the product of lack of equipment". Elsewhere in his testimony Allegheny's president has emphasized the determination of the merged company not to disrupt existing services of the two companies as a controlling consideration with respect to the scheduling of additional through services. However, Lake Central has just recently changed its schedules, and new plane miles and considerable schedule adjustments are involved in the proposed through-plane services.

The record does suggest that Allegheny might well have gone further than it has to exploit initially the potential of the combined systems. On the other hand, management is probably justified in proceeding cautiously as it makes its way through the unfamiliar terrain of the first year. So many imponderables face the surviving company at the outset that, on balance, it seems fair to conclude that some untapped revenue potential in the first year of combined operations must be accepted as unavoidable.^{8/}

The Effect of the Merger on Subsidy Need -

The forecasts of initial operating results -

The joint applicants and the Bureau are poles apart in their estimates of the economic impact of the merger during the initial period of operations which, for the purposes of forecasting, has been assumed to be the year ending

8/ After the Bureau's extensive probing of the applicants' witnesses on cross-examination concerning their failure to schedule more single-plane services, it commented in its brief that these service omissions in the first year do not warrant criticism.

March 31, 1969. Thus, the applicants estimate that new through-plane services resulting from the merger will yield an operating profit of \$425,000, while cost changes flowing from the merger will bring a net increase in expenses of \$341,000 and, therefore, the net economic impact of the merger would be a profit of \$84,000 in the forecast year. The applicants further note that while they have not forecast the revenues of the second year of merged operations, they do anticipate that reductions in expenses would yield further savings from the merger of approximately \$540,000.

By contrast the Bureau forecasts that the net financial effect of the merger as a minimum would be an improvement in net profit and a reduction in subsidy need of \$1,078,000 in the first year. This estimate is derived from a projection of a minimum operating profit of \$903,000 from additional revenues afforded by the merger and a subsidy-need reduction of \$175,000 resulting from cost changes.

These estimates represent the difference between the aggregate of the applicants' forecasts of their separate operations in the future year and the forecasts of the Bureau and the applicants, respectively, of the merged carrier's operations during the same year. For this purpose, the Bureau has accepted the applicants' forecast of their independent operating results in the year ending March 31, 1969.

Since both the applicants and the Bureau have constructed their forecasts of the economic impact of the merger by considering separately (a) the effect on revenues and expenses of the proposed new through-plane services, and (b) the subsidy effect of the cost changes associated with the merger, the respective forecasts will be considered on the same basis.

123S

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Forecasts of traffic and revenues -

The applicants expect that the new and added services which would be scheduled as a result of the merger during the first year of operations would contribute net added passenger revenues of \$2,942,000.^{9/} On the other hand, the Bureau estimates that the new services will provide additional passenger revenues of \$3,614,000. The \$672,000 difference in the forecasts of passenger revenues represents the single largest area of dispute regarding the economic impact of the merger.^{10/} Most of the disagreement over traffic and revenues derives from the parties' divergent views of the percentage of the "normal" year forecast which would be achieved in the first 12 months of operations in the new competitive markets (Boston-Cincinnati, Boston-Indianapolis, Toronto-Pittsburgh, and New York-Charleston). Both sides concur that the merged company would not realize normal year traffic during the first 6 months of service, but that it would begining with the 7th month. The crux of the dispute is the degree of market penetration in these markets during the first 6 months of operations of the merged company.

^{9/} This figure should be increased to \$2,944,000 to account for a \$2,000 correction in self-diversion noted on the record by an Allegheny witness. As a result, the applicants are shown in appendix C, attached, as forecasting a \$427,000 operating profit from through services and a total operating profit of \$87,000 after cost changes.

^{10/} Both use the same direct and indirect costs, the latter being based on Subpart K data for the year ended September 30, 1967. The Bureau has not pursued its original tack of questioning the applicants' reliance on Subpart K costing.

1240

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Participation estimates -

By discounting the stimulation usually ascribed to new schedules in the Board's studies^{11/} and by reducing the participation factor which is usually used, the applicants have modified these studies, which served as the basis for the forecast of a normal year, to predict a traffic level during the first year at 72 percent of normal traffic. In view of the assumption that the abnormally low market penetration would occur during the first 6 months, the applicants are predicting, therefore, that only 44 percent of normal traffic would be developed in the four new competitive markets in the first half year of service. Relying on the same studies, the Bureau, on the other hand, has forecast that during the first year of operations the merged carrier would achieve 85 percent of normal traffic in the same markets, and, accordingly, that only 70 percent of normal traffic would be obtained during the first 6 months of service.

While, therefore, the applicants forecast 47,611 passengers in the four markets during the initial year of merged operations, the Bureau has forecast 55,849 passengers, or 8,238 more passengers and \$298,000 more revenue after adjustments for a 14-percent dilution factor and fare rounding.^{12/}

Essentially, the controversy stems from a difference of judgment of the respective witnesses for the Bureau and the applicants, influenced by

^{11/} These involve use of the standard service quality index (SQI) to determine the capacity of a local service carrier to compete with trunklines for single-carrier traffic.

^{12/} The bases for these adjustments are explained infra at page 22.

1241

17.

Board precedent in other cases. In view of the relatively short period of 6 months considered by both sides to be time enough for the merged carrier to reach a normal traffic level, the rapid buildup forecast by the Bureau seems more likely than the rate of penetration forecast by the applicants. It would appear that the shorter the time assumed necessary to develop normal traffic levels, the higher the initial level of penetration and the steeper the rate. The applicants' estimate assumes penetration of only 10 to 35 percent of a normal level during the first 3 months of service, and is, therefore, unrealistic. The projection of only 14,423 passengers in the first 6 months of the service, out of a total participation of over 47,000 passengers in the first year, bears this out.

The cases cited by both the applicants and the Bureau support the higher percentage of participation forecast by the Bureau. As the Bureau points out, the Board projected traffic at a level of 85 percent of a normal year when it ordered ad hoc adjustments to account for the subsidy impact of the route changes effected in the Western Montana Service Investigation (Docket 16987) and in the Frontier-Central Merger Case (Docket 18517).^{13/} In these cases the traffic projections also assumed a normal level of participation in the second half of the first year of service.

In the two cases cited by the applicants^{14/} where the Board had predicted initial traffic below 85 percent of normal, it was determined that the whole

^{13/} Order E-25914, November 2, 1967 (Western Montana Service Investigation); and Order E-25694, September 18, 1967 (Frontier-Central Merger Case).

^{14/} Order E-18286, May 1, 1962 (Pacific-Southwest Local Service Case, Docket 5645 et al.); and Order E-18245, April 23, 1962 (Buffalo-Toronto Route Case, Docket 7142).

first year of service would be developmental and that normal participation would not be reached until the 13th month of operations. Besides, the trend in the Board's decisions has been toward higher, rather than lower, forecast levels of participation. The cases relied on by the applicants date back to 1962, whereas the adjustments ordered as a result of the Western Montana Service case and the Frontier-Central Merger Case, supra, were made in late 1967. Moreover, following the Board's very recent award of route authority to Allegheny which extended the carrier's system from Pittsburgh to Louisville, the Board forecast a 90-percent level of traffic during the first year of service.^{15/} In so doing, it pointed out that the traffic developmental period was expected to be "somewhat shorter than it would otherwise be since service is presently being provided in these existing markets".

In the light of all of the foregoing and the evidence of record, and the applicable Board precedents, it is found that the Bureau's forecast of first-year penetration at a level of 85 percent of normal traffic in the four markets involved is reasonable and will, therefore, be adopted. Thus, the applicants' forecast of revenues will be increased by \$298,000 to reflect this adjustment.

Connecting ratios:-

There is also substantial disagreement between the applicants and the Bureau with respect to their approach to forecasting the connecting

^{15/} Order E-26522, March 15, 1968. The same 90-percent factor was used by the Board for first-year participation in competitive markets in the ad hoc adjustment of Frontier's subsidy (Order E-26310, February 2, 1968) to reflect the award of new authority in the Denver-Grand Junction-Las Vegas Service Investigation (Docket 17914).

1243

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traffic in the competitive and first single-plane markets. The applicants maintain that they will have no connecting traffic in three of the four competitive markets, namely, Boston-Cincinnati, Boston-Indianapolis, and New York-Charleston. The theory of the applicants is that these markets are over 400 miles long, and that considering the distance, together with the nature of the particular cities and service involved, no measurable amount of connecting traffic would result. As to the fourth, Pittsburgh-Toronto, both the applicants and the Bureau agree that a 20-percent connecting ratio is proper.

The Bureau, on the other hand, forecasts connecting traffic in each of the three disputed markets based on the Board's 1966 O&D and Competition Surveys.^{16/} The Bureau's method would add \$134,000 of revenues to the applicants' forecast, after dilution at 14 percent and fare rounding.

On consideration of the opposing contentions, it is found that the Bureau's analysis of the connecting traffic potential is the more reliable, subject, however, to some adjustment. The applicants do not contend, let alone demonstrate, that they will be unable to attract the local traffic in these markets. Since the connecting passenger is in essentially the same situation as the local passenger insofar as his choice of service is concerned, the Bureau is correct that even though the merged company may

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	<u>Connecting Ratio</u>	<u>Connecting Traffic</u>
Boston-Cincinnati	8%	1,309
Boston-Indianapolis	6	814
New York-Charleston	10	1,596

244

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have to operate flights with stop services, such flights can reasonably be expected to attract the experienced level of connecting traffic. These historic ratios are made up of connecting traffic traveling on both stop flights and nonstop flights. It is also noteworthy that the applicants' witness who sought to defend their opposition to inclusion of any connecting traffic in three of the competitive markets conceded that his forecast might be too conservative.

On the other hand, as the applicants point out, the Boston-Cincinnati historic connecting traffic for the year 1966 includes passengers who are also in the forecast under Boston-Indianapolis local passengers. This results in a duplication of about 1 percent of the connecting ratio. Moreover, more recent data for the first quarter of 1967 show that the connecting ratio in the Boston-Cincinnati market has decreased to less than 5 percent. To account for these circumstances, the 8-percent historic connecting ratio relied on by the Bureau will be reduced to 6 percent.

As shown in appendix F, the use of historical connecting ratios indicates that the merged carrier would receive \$132,000 more passenger revenues in new competitive markets than it has forecast.

The difference between the parties as to the use of connecting ratios in the seven first single-plane markets involved turns on the proper percentage to apply, rather than whether any ratio at all should be used.

The applicants contend that, except for the Toronto-Cincinnati market in which they make no forecast of connecting traffic, the connecting ratio in the single-plane markets should be 20 percent. The Bureau, however, would

1245

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apply a 35-percent factor in these markets except for Bradford-Columbus and Jamestown-Columbus which they discount as having no significant interline connecting points. The Bureau's forecast assumes the carrier would earn \$62,000 of additional revenues after dilution and fare rounding.

The 35-percent ratio supported by the Bureau is based on a study taken from another Board proceeding showing the relationship of connecting traffic to total local traffic in 129 markets receiving first one-plane service.^{17/} It contends that the study has been accepted by the Board in many proceedings. Nonetheless, it appears to be inappropriate for reliably forecasting connecting traffic in the most important of the specific markets in question. Among other things, the Bureau has failed to consider the peculiarities of the individual markets.

For example, the Bureau has not taken into account that, generally speaking, given two points of relatively equal connecting possibilities, the passenger will use the nearest connecting point and has, therefore, probably overstated the potential traffic in the Jamestown-Cincinnati, Toronto-Columbus, and Toronto-Cincinnati markets. Thus, the Jamestown-Cincinnati passenger would tend to use Cleveland as a connecting point rather than Cincinnati, while most Toronto-Cincinnati/Columbus passengers would be more likely to make connections at Cleveland or Detroit.

On the other hand, in two of the markets where the Bureau itself conceded that there was no significant interline connecting point, Bradford-

^{17/} Airline Traffic Surveys and Exhibit BOR-R-2, South Dakota-Rochester-Chicago Service Case (Docket 16766).

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Columbus and Jamestown-Columbus, it assigned no connecting ratio, even though the chart in the study indicated a ratio of 40 percent for one market and 43 percent for the other. Thus, while the Bureau has recognized the need to accommodate use of its study in the most extreme cases, it has not followed through to temper its application of the study with judgment in other less glaring but no less valid instances.

In view of all of the foregoing, it is found that the 35-percent connecting ratio supported by the Bureau is too high and that the 20-percent ratio advocated by the applicants is more reasonable under all the circumstances, and, accordingly, that the additional revenues estimated by the Bureau from the seven first single-plane markets should not be recognized.

Other traffic and revenue adjustments -

The combination of two recent fare developments has led both the applicants and the Bureau to reduce their original revenue forecasts. The dominant factor reflects the results of the November 1967 systemwide test of Allegheny's yield which shows that Allegheny's fare dilution has increased to 14.5 percent from the 10.3 percent disclosed by the previous test in April 1967 and applied in the exhibits. A subordinate influence has been the effect of the Board's recent approval of the rounding of fares by air carriers to even dollar amounts.^{18/} Thus, carriers may now round up fares to the next whole dollar in markets 750 miles or less, and round them down in markets over 750 miles. In recognition of these developments, the Bureau

^{18/} Order E-26254, January 18, 1968.

1247

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has decreased its forecast of revenues by \$132,000.^{19/} However, in its brief, for the first time in the proceeding, the Bureau went on to argue that the applicants should have forecast additional revenues from the stimulative effects of the reduced fares, but failed to do so.

The Bureau would remedy this alleged oversight and determine the stimulated traffic by applying a fare elasticity equation borrowed from a recent Board staff research study into the historical response of traffic to fare changes in the domestic trunkline industry.^{20/} As a result of applying the equation, the Bureau has concluded that in the first year of service the merged carrier should have an increase of \$163,207 in passenger revenues from fare stimulation.

However, no specific increment attributable to the fare dilution sustained by Allegheny in recent months is supported by the record, let alone the precise dollar figure the Bureau derives from the equation. The Bureau's assumptions underlying the need for the adjustment are largely unfounded, and its reliance on the equation does not help matters.

For example, the Bureau has overlooked the other elements besides yield which have played a part in the growth of Allegheny's traffic during 1967,

^{19/} This is the net effect of a \$152,093 decrease in revenues as a result of the upward trend in fare dilution, and a \$19,666 increase owing to fare rounding.

^{20/} "Forecast of Domestic Passenger Traffic for the Eleven Trunkline Carriers--Scheduled Service--1968-1977".

such as the upgrading of its equipment to jet service and the institution of new services in several markets.^{21/} Indications are that such factors will continue to influence traffic during the forecast year.

Considering the techniques which are usually used by the Bureau for forecasting traffic and which have been adopted by both the Bureau and the applicants in this case, it should be apparent that the inclusion of an additional volume of passenger traffic because of Allegheny's increasing use of promotional fares would largely duplicate traffic already accounted for by the growth factor included in the forecast.

The flaws in the Bureau's position do not entirely negate the likelihood that the merged carrier will benefit from some additional traffic stimulated by promotional fares. But the record has no reliable indicator of the probable increment by way of either judgment or objective evidence. Unfortunately, the elasticity equation the Bureau has borrowed only leads it even further astray. The study is a macro-indicator developed from a time series for the whole domestic trunkline industry employing data for the period since 1946, and, therefore, reflects the results of the preponderance of coach service by the trunklines which, of course, is not at all representative of the traffic of the local service carriers. Furthermore, since it was constructed from industrywide trunkline data, the formula can scarcely be used to forecast market stimulation from promotional fares in the specific markets in issue here. In any event, since an amalgam of

^{21/} Among others, Baltimore-New York, Baltimore-Boston, Philadelphia-Boston, Washington-Hartford/Springfield, and Pittsburgh-Boston.

factors, rather than the fare level itself, has influenced Allegheny's recent traffic growth, an elasticity of demand formula is inapposite.

In light of all the foregoing, it is found that the record does not support the Bureau's argument that \$163,000 more revenue should be added to the applicants' forecast because of Allegheny's growing use of promotional fares. Nor, as indicated, does the record permit a finding as to the probable amount of additional revenues the promotional fares will in fact produce.

A relatively minor adjustment contended for by the Bureau involves a \$12,300 decrease in the self-diversion estimated by the applicants as a result of new through-plane services. The applicants argue that self-diversion should be determined, as it usually is, according to the carrier's historic yield since the passenger diverted is assumed to be taken from existing routings. On the other hand, as the Bureau points out, the yield which will be realized by the merged carrier in the markets in issue during the first year of service may be reliably predicted. The applicants are not faced with the customary problem of determining diversion of traffic from other carriers where each carrier's system average yield is used for convenience. Therefore, the circumstances which will obtain during the forecast year should govern rather than the historic experience. Accordingly, the revenues will be increased over the applicants' forecast by \$12,300 to reflect the probable yield of 5.51 cents per revenue passenger-mile after fare rounding and a dilution factor of 14 percent rather than the yield of 7.60 cents used by the applicants.

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Finally, the applicants insist that the Bureau's method of forecasting resulted in an overstatement of revenues of \$78,000, which they termed a "mechanical error"; that is, they object that the Bureau applied its factor of 85 percent to the total passenger revenues it estimated for the formal year instead of applying that factor in order to make separate adjustments of the stimulation and participation in each market. The Bureau's reply is that this is simply an arithmetical exercise on the applicants' part which would reduce the factor to 82.4 percent although the Bureau intended it to be 85 percent. This is not so much a matter of a "mechanical error" as it is the result of a difference in judgment. Under the circumstances, the Bureau's figure will not be altered.

Forecasts of cost changes -

The applicants have estimated that cost changes related to the merger, exclusive of those incident to the proposed new through services, would reduce the operating profit in the first year of merged operations by \$341,000, after corrections of \$22,000 made at the hearing. The Bureau disagrees as to the likely changes in certain areas, discussed below, claiming that they would actually result in a net operating gain of \$175,000 in the first year. Thus, the total amount in contention is \$516,000.

General and administrative expenses -

Over the first 2 years of the merged company's operations, the applicants forecast savings of \$605,000 in administrative expenses. They have developed this figure from plans to reduce management personnel expense by 10 percent as a matter of policy through the elimination of duplicating jobs

as between the two merging companies. Since the combined annual salary level of management and secretarial personnel of the two companies would be \$5,240,000, a 10-percent reduction would yield a saving of \$524,000, which together with savings in fringe benefits and travel expenses would increase the total savings to \$605,000. The applicants anticipate that half of this sum will be saved in the first year and the rest in the second year of the merged company's operations.

On the other hand, while the applicants "hope" to avoid any penalty, they are providing for the contingency that there may be \$100,000 of claims under the labor protective provisions during the first year. This amount is based on the judgment that of the 55 persons who represent the 10-percent reduction in jobs, about 20 percent, or 10 individuals, at an average termination cost of \$10,000 each, would be terminated under conditions making them subject to the labor protective provisions. Inasmuch as Allegheny's witness who supported the judgment figure of \$100,000 of labor protective expense in the first year conceded that the amount was to provide for a contingency only, that is, "it can or cannot happen", the Bureau has opposed this reduction of the \$605,000 savings estimate as inconsistent with established Board policy of not recognizing forecasts of cost increases which are not definite.

The \$100,000 contingency provision is clearly a judgment figure without any objective support in the record even as to the relative probabilities of whether the expense will materialize or not. The Bureau is correct that

52

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the Board has followed the policy of not recognizing this kind of claim in determining the amount of subsidy support to which a carrier is entitled.^{22/} Accordingly, it is found that the projected savings of general and administrative expenses should not be decreased by \$100,000 to provide for only a possibility that some released employees will have to be compensated in accordance with the labor protective provisions which will be imposed in this case.

Legal fees -

The applicants have forecast that the merger would permit a saving of \$10,000 per year representing one-third of Lake Central's legal expenses. The Bureau agrees with the one-third reduction, but not with the amount used as the base for the reduction.

The applicants have used the base year ended September 30, 1967, to arrive at their estimate. In that year Lake Central's legal expenses amounted to \$50,400. However, the applicants have eliminated \$20,000 of this amount on the ground that it related to a non-recurrent interim financing and was therefore not representative of the normal amount of Lake Central's legal expense. As the Bureau points out, however, the carrier's experienced legal fees during 1966 and the first 9 months of 1967 ranged from \$11,000 to almost \$14,000 for each of 6 quarters and \$18,500 for the quarter ended September 30, 1966. Besides, Lake Central's forecast of its own separate operations for the future year coincides with the level of general and administrative expenses incurred during the base year ended September 30, 1967.

^{22/} Braniff Airways, Domestic Mail Rates, 18 C.A.B. 162, 177 (1953); Mid-Continent Air., Mail Rates, 16 C.A.B. 68, 77 (1952); and Continental A.L., Mail Rates, 14 C.A.B. 1136, 1140 (1951).

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In view of the foregoing, it is apparent that Lake Central has recently been averaging annual legal expenses of \$50,000 and that it projects a like amount for its own separate operations in the forecast year. Accordingly, using Lake Central's legal expenses in the year ended September 30, 1967, as a base, the legal fee savings should be increased from the \$10,000 forecast by the applicants to \$16,800.

Training costs for pilots and mechanics -

The applicants anticipate the merger will require a substantial training program involving a certain number of the pilots of both companies, reservations, station and ground handling personnel, maintenance personnel, and dispatchers. The \$352,000 cost of this program will be amortized over a 5-year period. Originally, the Bureau's exhibits contested all of these expenses because training costs were not claimed in other merger proceedings, and it was satisfied that the program could be carried out by on-the-job training and would, therefore, cost little.

In its brief the Bureau has withdrawn most earlier objections to training costs and opposes only those related to pilots and mechanics. These would total \$57,129 during the first year after the merger. It objects to charging these training costs to the first year's operation because the training will qualify virtually all the maintenance personnel to service all of the equipment types on the combined fleet, and qualify the maximum pilot complement of both carriers on every route and at every airport of the merged system.

1254

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Allegheny's vice president-maintenance and engineering supported the training costs for mechanics as being required by the proposed centralization of the merged company's maintenance at Indianapolis and Pittsburgh, and testified that the centralization would produce operating efficiencies and reduce costs. He would not venture an estimate as to the reduction in costs and the applicants have not reflected any such savings in their exhibits. The merged company will incur approximately \$15 million annually in maintenance expenses; therefore, as the Bureau argues, it is reasonable to expect that the \$20,302 estimated cost of training mechanics in the first year would easily be offset by cost savings from increased maintenance efficiency. The failure of the applicants to estimate the savings should not insulate the merged carrier from what appears to be a justifiable offset to the claimed costs. Therefore, the cost of training mechanics during the first year of merged operations will be disallowed.

The Bureau has apparently abandoned its position that on-the-job training would suffice for the contemplated training program for mechanics and pilots. The thrust of its opposition to the costs of pilot training now appears to be that the need for training is not occasioned by the merger, but by projections for new services unrelated to the merger.

Despite the Bureau's searching cross-examination of Allegheny's vice president-flight and operations manager, who supported the costs of the training program for pilots, he was able to establish satisfactorily that these pilot training costs are chargeable to the effects of the merger.

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Thus, he showed that failure to carry out the training program for pilots would adversely affect crew utilization and the safety of operations.

He also testified that the applicants plan to operate a single airline as quickly as possible and must train personnel promptly in order to preserve existing levels of efficiency. In addition, he noted that the training of pilots, as well as mechanics, is the responsibility of the carrier, which must bear the consequences of any deficient performance. In view of the ample evidence as to the need for the proposed pilot training program, and the failure of the Bureau to support its contentions that the associated costs are already covered by assignments of expenses to the new services to be operated by the merged system, and that the recognition of such costs would charge the merger with expenses for services not forecast and authorities not yet in service or awarded, it is found that the \$36,827 charged by the applicants to the pilot training program should be recognized.

Standardization of aircraft exteriors and ground equipment -

At an early stage of the case, the Bureau argued that the cost of painting Lake Central's airplanes and ground equipment to conform with the appearance of Allegheny's should be amortized over 5 years as an extraordinary and non-recurring expense. This adjustment would have reduced the first year expense by \$57,158. However, Allegheny's witness conceded that the expense of painting aircraft might be written off over an 18-month period. Since the witness also testified that the aircraft are usually repainted every 12 to 18 months, the Bureau now contends that two-thirds

1256

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of the cost representing 12 months will be saved, and, therefore, that the merged company's expenses may be reduced by \$35,766 or two-thirds of the \$53,648 the applicants assigned as the cost in the first year.

With respect to ground equipment, the witness also conceded that repainting is done every 2 years. The Bureau contends, therefore, that the standardization painting will obviate Lake Central's regular painting costs in the forecast year, and that one-half of the \$17,800 charged by the applicants for this item will be saved.

The applicants accept these adjustments and, accordingly, the cost savings of \$35,766 for aircraft painting and \$8,900 for painting of ground equipment in the first year of merged operations. It is found that the record supports these reductions of the costs of the merger in the forecast year.

Lake Central's net operating loss carryover -

According to Allegheny's forecast of its own separate operations for the year ending March 31, 1969, it would have to pay \$306,602 of Federal taxes on its forecast net profit of \$1,277,510. On the other hand, Lake Central had an operating loss in 1967 of more than \$4 million, and as a result will have a net operating loss carryover of like amount in the forecast year. The applicants concede that under applicable law this loss carryover should be available to the surviving company^{23/} and, therefore, that

^{23/} As Allegheny's vice-president and controller testified, "The tax law specifically does not let the surviving company throw the loss back against the surviving company's prior taxes. It can only carry them forward." (Tr. 354)

1257

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it will pay no Federal income taxes on any net profit in the first year of the merged operation. The Bureau contends that Allegheny's tax saving is a result of the merger and that the \$306,602 involved should be used to reduce the subsidy need of the merged carrier in the forecast year.

The applicants vigorously oppose the Bureau's position on this point, including its view that the Board's actual tax policy^{24/} should be applied in this instance. One objection they press is that the merger does not create the tax saving. They also contend that the tax loss carryover was one of the factors which enabled Lake Central to merge with Allegheny despite its poor earnings record. But these and other arguments made by the applicants cannot erase the stubborn and overriding fact that Allegheny falls heir to the tax saving as the surviving carrier. While, as the applicants argue, the merger does not create the tax loss carryover, it gives it effect. Allegheny forecasts a profit against which the tax credit can be applied, but Lake Central does not, and would not be able to take advantage of the credit. Thus, if the two carriers were to operate separately in the forecast year, neither would have the benefit of it. It is clear, therefore, that in the forecast year the economic benefit of the tax credit will be due to the merger alone, and that the Board's actual tax policy requires that the saving be taken into account for subsidy need purposes.

^{24/} See e.g., Mohawk Air., Mail Rates, 29 C.A.B. 198, 206 (1959); and West Coast Air., Mail Rates, 23 C.A.B. 633, 642 (1956).

1258

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The applicants' argument which draws on the genesis of the actual tax policy prior to the class rate is presented in such a way as to imply that it was confined to past period rates only. The fact is, of course, that, as in the Colonial Air., Mail Rates case,^{25/} the Board applied the policy to future, or "closed" rates where the carrier itself bore the risk of any losses just as Lake Central did in 1967. The policy was intended not only to help meet the carriers' actual need for subsidy support, but also to prevent windfalls to carriers which would not in fact incur an obligation to pay the taxes incident to the allowed return from future operations. The claim that under Class Rate IV Lake Central's subsidy would not have been reduced in a future year had it earned profits and had a tax saving due to its loss carryover is irrelevant to the determination of the economic impact of a merger on subsidy need. In this hypothetical situation Lake Central would have been operating on a "closed" rate; in actuality, the merged carrier will be in an "open" rate status under the Class Rate IV procedure which will govern the ancillary proceeding requested by both the applicants and the Bureau and which is proposed herein.

The applicants advance as an equitable consideration in their favor the fact that the application of the actual tax policy in this instance would impair their opportunity to receive a fair return on investment. To buttress the point they cite the Board's ruling in the Reopened Trans-atlantic Final Mail-Rate Case,^{26/} to the effect that the purpose of making

^{25/} 15 C.A.B. 279, 318 (1951).

^{26/} 23 C.A.B. 307, 320 (1956).

1255

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provision for taxes is to assure that the carrier will actually receive the intended return on investment. Even conceding, arguendo, that this contention is relevant, inasmuch as the problem at hand is to ascertain the economic effect of the combined versus the independent operations of the merger applicants, the contention, in any event, wholly ignores the logic and operation of the actual tax policy. If, as the record demonstrates, the merged company will pay no taxes in the forecast year, the integrity of its return on investment will in no way be impaired. Allegheny is really suggesting that it be allowed to enhance its forecast return on investment in the guise of a tax allowance.

Accordingly, in view of the foregoing and the evidence of record, it is found that the Board's long-established actual tax policy should be applied to the facts of this case and that the cost savings attributable to the merger should be increased by the \$306,602 saving in Federal income taxes available to Allegheny from the application of Lake Central's tax loss carryforward.

Conclusion -

As shown in appendix A, the merged company should earn \$595,000 more operating profit in the forecast year than the combined operating profit projected by the two carriers for their separate systems. This forecast represents the net effect of the estimated operating profit from through services of \$763,960 and the estimated increased costs of \$168,741 resulting from the merger (appendix C). The indicated profit is inclusive of subsidy calculated on the basis of the applicable subsidy rates of the respective carriers.

50

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After taking into account the \$307,000 tax saving available to Allegheny because of Lake Central's operating loss carryover, the net income of the merged company is expected to be \$902,000 more than that of both carriers operating independently, based on their own predictions. While \$902,000 would be available for subsidy reduction, the saving resulting from the tax loss carryover, being unrelated to the efficiency or economy of the merged operations, must be discounted in appraising the operating potential of the surviving company during its first year of service.

The difficulties, both foreseen and unforeseen, which Allegheny will have to grapple with during the initial period of merged operations are bound to mask temporarily the true economic potential of the surviving company. The record shows that the long-range outlook is bright. Among the benefits the surviving company may anticipate in the long run are the economies of increased scale, the efficiencies of proven management and centralized maintenance, a broader scope for advertising and promotion, and the elimination of duplicating facilities and services. In fact, Allegheny's president testified that once the surviving company begins to hit its stride, and assuming a certain degree of success with its applications for route authority, including the removal of various Lake Central operating restrictions, it "could very well be off subsidy in the very early seventies ... closer to 1970 than 1975".

The Consideration for the Merger -

As one of the factors bearing on the public interest aspects of the merger, the consideration involved must not be so unreasonable as to affect adversely the interests of the buyer, the seller, or the public. The Board has many times held that the consideration must have been arrived at by arm's length bargaining between the parties without evidence of fraud, duress, or collusion.^{27/}

The applicants allege that the terms of the merger were in fact the result of arm's length bargaining between the two companies. There is no evidence in the record or any contention by any party to suggest the contrary. Nor has any objection been entered against the merger terms.

The evidence clearly supports a finding that the ratios for the exchange of stock are reasonable. Lake Central's recent operating results and financial condition have been generally poor. Indeed, the carrier reached the point last January of having to issue additional stock in order to obtain more working capital. These stock sales led to the reduction of the 0.5 conversion ratio approved at the signing of the merger agreement. The new conversion ratio, however, was determined largely on a mathematical basis from the stock prices of the two companies on January 23, 1968. As of that date, Allegheny's stock was listed at 14.25. Multiplying this

^{27/} Frontier-Central Merger Case, Order E-25626, September 1, 1967; South Pacific-Pan American Route Transfer Case, Order E-20981, April 21, 1964; Continental-Pioneer Acquisition Case, 20 C.A.B. 323 (1954); Delta-Chicago & Southern Merger Case, 16 C.A.B. 647 (1952); and United-Western, Acquisition of Air Carrier Property, 8 C.A.B. 298 (1947).

282

38.

stock closing price by the 0.44 ratio of exchange for common stock agreed to the same day produces a figure of 6.27 as compared with the 6.50 high, and 6.25 low, bids for Lake Central's stock. As Allegheny's president testified, while there may be various ways of measuring the ratio of exchange of stock between two companies contemplating merger, the generally accepted test of the fairness of an exchange ratio is the public's appraisal of the stock on the market. The Board has previously relied on the comparative market value of securities in the course of ascertaining the fairness of the consideration for a merger.^{28/}

The very favorable response of the stockholders of both companies to the merger agreement is reflected in the results of their vote taken on March 14, 1968.^{29/} It is apparent that, in terms of the percentages

28/ Colonial-Eastern Acquisition Case, 23 C.A.B. 501, 511 (1956).

<u>29/</u>	<u>Total</u>	<u>In Favor</u>	<u>Against</u>	<u>Withheld</u>
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Allegheny Common Shares	1,418,309	1,391,033	11,375	15,901
Percentage	77.16	75.68	.62	.86
Lake Central Common Shares	1,506,416	1,498,310	8,106	-
Percentage	87.40	86.93	.47	
Lake Central Preferred Shares	22,457	19,825	2,632	-
Percentage	68.03	60.06	7.97	

Shares outstanding as at January 23, 1968:

Allegheny Common	1,838,091
Lake Central Common	1,723,591
Lake Central Preferred	33,008

1203

39.

of shares voted against the merger, the only appreciable dissent was registered by holders of Lake Central's preferred stock. Since affirmative votes of two-thirds of the outstanding shares of Allegheny common stock and of Lake Central capital stock regardless of class, plus an affirmative vote of a majority of Lake Central's outstanding preferred shares, voting as a class, are required for approval, the stockholders have easily satisfied the legal requirements as to their approval.

Those owning preferred stock in Lake Central who have voted against the merger agreement have the right under the Delaware General Corporation Law to payment in cash of the value of their stock on the effective date of the merger exclusive of any element of value arising from the expectation or accomplishment of the merger. Equivalent rights to payment are not available to objecting holders of common stock in either carrier.

In view of the form of the consideration for the merger and the potential of Lake Central's system as it will be operated by Allegheny, the consideration should have no adverse impact on Allegheny. The exchange of stock will cause no depletion in Allegheny's working capital and should have no adverse effect on its subsidy need or on its capacity to serve the public. For the same reasons there is no indication that the consideration will have an adverse effect on the public interest.

In the light of the foregoing and the evidence of record, it is found that the consideration for the merger will not adversely affect the interests of Allegheny, Lake Central, or the public; and that there is no evidence of fraud, duress, or collusion, or that the consideration was arrived at except as a result of arm's length bargaining.

204

40.

Monopoly and Restraints on Competition -

There is no allegation in the record that the merger would result in a monopoly or monopolies and thereby restrain competition or jeopardize another carrier in contravention of the anti-monopoly proviso of section 408(b) of the Act. Although the applicants serve nine points in common, they compete with each other in only two markets, neither of them significant. One is the Pittsburgh-Wheeling market, which covers only 32 miles and which had 2,580 local O&D passengers in 1966. The merger will result in monopoly in this instance, but considering the size and character of the market, it is evident that a reduction from two carriers to one will have only a slight impact on the traveling public. No appearance was entered by any representative of either city. In any event, the surviving carrier will continue to provide service. Accordingly, the elimination of Lake Central's service is not deemed inconsistent with the terms of the Act.

The Washington-Baltimore market represents the only one where there will be a decrease in competition because of the merger. Since this is a 30-mile market now served by seven carriers, but with insignificant true local O&D traffic, this decrease in competition is found to be immaterial.

Diversion from Other Carriers -

No air carrier opposes approval of the merger, nor, indeed, has any air carrier submitted any estimates of diversion, or claimed that the merger would adversely affect it. Therefore, there is no indication whatever in the record that the merger will have any adverse impact on any other air carrier.

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The Impact on the Applicants' Employees -

Allegheny represents that it will offer employment to all Lake Central employees "to the greatest extent feasible". Inasmuch as Allegheny's prevailing wage and salary rates are higher in many cases than Lake Central's, Allegheny's plan to extend its wage and salary rates to all employees of the merged company will benefit Lake Central's employees. In no case does the record disclose that the merger will result in any economic injury to any of the employees of either company. Allegheny hopes to achieve the 10-percent reduction in general management expense discussed above without the need to terminate anyone's employment. No furloughs of personnel are presently contemplated, and it is anticipated that normal attrition, reassignment, and growth will permit the absorption of any surplus employees which may result.

The applicants state that they are willing to accept the labor protective provisions adopted in the United-Capital Merger Case, supra, but are opposed to any attempt to modify these provisions, particularly if costs would be increased or different burdens imposed. The Bureau and all five of the labor organizations which have intervened in this proceeding also recommend adoption of these labor protective provisions.^{30/}

After the merger, Allegheny intends to maintain its labor agreements with ALPA for pilots and flight attendants and with IAMAW for mechanics

^{30/} ALDA, ALEA, ALPA, and the Teamsters have requested changes in the provisions which are considered later.

206

42.

with respect to all employees in these craft and class categories. On the other hand, Allegheny has taken the position that it will not recognize the labor agreements outstanding between Lake Central, on the one hand, and the Teamsters (mechanics), ALDA, and ALEA (certain ground employees), on the other. Because of Allegheny's stand, ALDA and ALEA oppose the merger and ask that if the Board enters an order of approval, it should require as a condition that Allegheny assume the obligations of all outstanding collective bargaining agreements of Lake Central. In addition, ALEA requests that its contract with Lake Central be made applicable to the entire group of employees involved in the surviving company in the same class and craft and not simply former Lake Central employees.

In other recent merger cases, ALDA and ALEA, as well as other union parties, have asked the Board to impose a condition requiring the surviving carrier in each instance to assume the obligations of all outstanding collective bargaining agreements of the merging carriers. Without exception, these requests have been denied.^{31/} ALDA argues that the facts of the instant case are different because the applicants in the other merger cases committed themselves to honor the contractual obligations of their labor agreements, while Allegheny has reverted to the "archaic United-Capital position".

^{31/} Alaska-Cordova Merger Case, Order E-26086, December 6, 1967; Frontier-Central Merger Case, supra; and Western-Pacific Northern Merger Case, Order E-25240, June 2, 1967.

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This term is ALDA's characterization of the Board's decision in the United-Capital Merger Case. There, the IAMAW and the Brotherhood of Railway Clerks (BRC) asked the Board to impose a condition requiring United Air Lines, Inc. (United), as the surviving carrier, to recognize their existing collective bargaining agreements with Capital Airlines, Inc. (Capital), since United had decided that it would not do so. The Board refused either to amend the labor protective provisions for this purpose or to order such a condition on its approval of the merger. Instead, the Board advised the merging carriers to proceed under section 11 of the labor protective provisions since it was a matter to be worked out between them and their employees "in accordance with regular procedures applicable to the matter of representation and agreement".

Subsequently, BRC sued in a Federal District Court to enjoin United from refusing to abide by the provisions of the agreement between BRC and Capital. The suit was dismissed in the District Court on the grounds that the court lacked jurisdiction since the proceeding involved a dispute under the Railway Labor Act as to who could act as the representatives of certain of the employees of United, and that exclusive jurisdiction over the matter was vested in the National Mediation Board. This decision was affirmed by the Sixth Circuit Court of Appeals.^{32/}

The pertinent facts in the United-Capital Merger Case are identical with those in the instant case. In both, there is the refusal of a successor

^{32/} Brotherhood of Railway and Steamship Clerks v. United Air Lines, Inc., 325 F. 2d 576 (6th Cir. 1963).

123

44.

company to be bound by the provisions of any of the predecessor's labor agreements; the absence of any labor representation or collective bargaining agreement covering the same classes of employees of the successor company as those protected by the predecessor's agreements; the inclusion in each labor contract of provisions that it shall be binding upon the successors or assigns of the predecessor company, and that in the event of a merger, the said company will meet with the unions prior to the merger and negotiate terms for the protection of employees; and a merger agreement making the successor company subject to all the debts, liabilities, and duties of the predecessor.

Notwithstanding the similarities in the two cases, the unions, particularly ALDA, insist that the Board should disregard the ruling in the United-Capital Merger Case and require Allegheny, as a condition of the approval of the merger, to comply with the labor agreements between the unions and Lake Central. Because ALDA believes that Allegheny's position stems from the decision in BRCA v. United Air Lines, it seeks to distinguish the instant case by limiting itself to "the question of binding contractual obligation", as opposed to any issue of representation. Such an approach, however, is at odds with the Circuit Court's opinion in the BRCA case.
The court there rejected an argument like ALDA's when it held that "although the suit is cast in the form of an action under the law of contracts, it in fact involves a representation dispute".^{33/}

^{33/} BRC v. United Air Lines, supra, at 579.

120S

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Whether the dispute concerns a contractual obligation or representation, so far as the Board is concerned, the result should be the same. The Board does not normally inject itself into contract disputes between a merger applicant and third persons, including unions representing the employees of a predecessor company, and no persuasive reason has been offered for its doing so here. In any event, in view of the Circuit Court's decision in the BRC case, the dispute here must be regarded as one over representation and, therefore, a matter within the province of the National Mediation Board under the Railway Labor Act rather than for the Board to decide. Moreover, the BRC case aside, the Teamsters leave no doubt as to the nature of the dispute by seeking an order in this case which would preserve the representation rights of the unions pending further representation proceedings.

The mainstay of the unions' position appears to be the decision of the Supreme Court in John Wiley & Sons v. Livingston^{34/} which ALDA finds "strikingly similar" to the instant case. Although Wiley is similar in that it also involved a merger where the successor company refused to assume a labor contract of the predecessor company, the facts and surrounding circumstances differ in major and controlling respects. Briefly, Wiley was an action by a labor union under section 301 of the Labor Management Relations Act^{35/} to compel arbitration under its collective bargaining agreement with the merged publishing company which the surviving publishing

^{34/} 376 U.S. 543 (1964).

^{35/} 61 Stat. 136, 156, 29 U.S.C. § 185 (1947).

273

46.

company would not assume. The Court held in favor of compelling adherence to the arbitration clause of the repudiated agreement because it found that arbitration was central to effectuating national labor policy and was a substitute for industrial strife. In this connection, it found that national labor policy required some protection of employees from a sudden change in the employment relationship caused by the employer's action.^{36/} It is clear that the proceeding concerned only the arbitration clause of the labor agreement and that the Court did not pass on the continuing applicability of any other provision of the collective bargaining agreement. Of course, the issue posed here by the labor unions is much broader.

Since the labor protective provisions of the United-Capital Merger Case are to be adopted here, and since they are wholly devoted to affording protection to the employees from a change in the employment relationship, the purpose of the Wiley case is served without the imposition of the condition sought by ALDA and the other unions. The air carriers involved in this case, unlike the publishing firms in the Wiley case, are subject to economic regulation by an administrative agency which has a long history of cushioning the

^{36/} "... The objectives of national labor policy, reflected in established principles of federal law, require that the rightful prerogative of owners independently to rearrange their businesses and even eliminate themselves as employers be balanced by some protection to the employees from a sudden change in the employment relationship. The transition from one corporate organization to another will in most cases be eased and industrial strife avoided if employees' claims continue to be resolved by arbitration rather than by 'the relative strength ... of the contending forces,' ..." 376 U.S. 543, at 549 (1964).

47.

effects of mergers on employees with appropriate safeguards. The Board has done so without attempting to enforce alleged contractual rights or becoming embroiled in disputes over labor representation. In any event, it must be stressed that it is not for the Board to decide whether Wiley requires enforcement of the Lake Central labor agreements. Since ALDA argues that the issue is one of contract, its recourse is to the courts, not the Board, which is hardly the forum for deciding such an issue as well as any questions of representation.

Considering the ruling of the Circuit Court in the BRG case as to the nature of the dispute between BRC and United, the similarity between the relevant facts in the United-Capital Merger Case and those of the instant case, and the Board's decision in the latter case on the point at issue, it is clear that the contentions of the labor unions in support of the condition should be rejected.

In view of all of the foregoing and the evidence of record, it is found, in accordance with the Board's decision in the United-Capital Merger Case, that the condition requested by the unions should not be imposed; that the dispute between the unions and Allegheny over Lake Central's collective bargaining agreements is a matter to be worked out between them; and that the unions have not demonstrated that the failure to require the requested condition will expose Lake Central's employees to any economic injury, nor have they offered any other persuasive reason why the Board, as a matter of policy, should grant the relief requested.

Turning now to the other proposed changes in the standard labor protective provisions, it appears that both ALDA and the Teamsters have asked for (1) a provision that in any dispute between the carrier and an employee as to whether a change in employment status is due to the merger, the carrier shall assume the burden of proof, (2) a change in the claim period from 3 to 4 years from the effective date of the merger for displacements, changes in point of employment, and changes of place of residence, and (3) a provision for the determination of disputes by a neutral arbitrator rather than by an arbitration committee. ALDA itself has also requested an amendment to change the period of reimbursement of expenses and wages lost as a result of the transfer of an employee from the limit of 2 days to "2 days or the amount of time specified by the employee's applicable collective bargaining agreement". In addition, ALDA wants the Board to clarify section 9(a)(1) of the labor protective provisions dealing with a case where an employee's home has not been sold within a "substantial" period of time after the merger. ALDA says that all it asks is that the Board define with reasonableness what is meant by "substantial".

The Teamsters and ALPA request as a condition of the merger that a time-table be established for the parties involved to meet and negotiate concerning changes due to the merger. ALDA would require the parties "to meet and execute an agreement". The ALPA request is in the form of a proposed new section 14 to be added to the labor protective provisions specifying that the surviving carrier and the union will commence good faith negotiations to combine, merge, or amalgamate the various existing collective

49.

bargaining agreements for each class or craft of employee within 30 days of the Board order approving the merger. The IAMAW does not seek any amendments to the standard labor protective provisions, but requests merely that they be adopted by the Board in the instant case.

The labor protective provisions of the United-Capital Merger Case, which are found to be appropriate in the instant case, have been the standard provisions used by the Board in a number of merger cases and have been developed over a considerable period of time. The Board has determined that it will not change them absent a showing that the basic plan which they provide has not afforded reasonable protection to employees affected by a merger. No such showing has been made.

Proposals such as those which the labor unions have made in this case have been turned down by the Board in other recent cases.^{37/} The one pertinent distinction between the instant case and the other recent merger cases is Allegheny's statement on the record of its opinion that the Lake Central labor agreements will not be legally applicable to the latter's employees when they become employees of Allegheny. The implications of this position have already been considered.

^{37/} Alaska-Cordova Merger Case, supra; Frontier-Central Merger Case, supra; and Western-Pacific Northern Merger Case, supra.

The ALDA request for clarification of the proviso in section 9(a)(1) appears to be relatively new, having been made before only in the Bonanza-Pacific-West Coast Merger Case (Docket 18996) where it was denied (Order E-26625, February 23, 1968). The purpose of the proviso was explained in the United-Capital Merger Case (supra, at 326), namely, to exclude from consideration losses due to changes in the fair value of an employee's house not resulting from the merger, but from such independent causes as a decline in real estate values. The point seems to be a narrow one, and the language in question does not lend itself to the clarification sought. Moreover, ALDA has offered no concrete proposals which would assist clarification.

1274

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As for the requested conditions calling for a time-table requiring the parties to meet and execute new collective bargaining agreements or negotiate about existing ones, Allegheny's president has testified that Allegheny fully intends to continue its "historic policy of an outstanding relationship with [its] employees", and that Allegheny's opinion as to the applicability of Lake Central's labor agreements to Lake Central employees after the merger "should not be construed in any way to alter this policy". He added that "any group of Allegheny employees is, of course, free to seek a representation election under the Railway Labor Act, and Allegheny will deal with any unions so recognized in the normal course of business". Thus, Allegheny has emphasized its determination to avoid industrial strife, and preserve its labor relations record. In the light of the foregoing, it would not be in the public interest to grant any of the conditions involving a time-table for labor meetings and negotiations.

Besides providing that the labor protective provisions of the United-Capital Merger Case will be made a condition of the merger, the attached order will also specify that the Board shall retain jurisdiction to make such amendments, modifications, and additions as the circumstances may require.

LAKE CENTRAL'S EXEMPTION AUTHORITY
AND SINGLE-PLANE RESTRICTIONS

The two remaining issues to be considered are: (1) whether the exemptions now held by Lake Central should be transferred to Allegheny, and (2) whether condition (12) of Lake Central's certificate for route 88 should be deleted or modified. No party has raised any objection to transferring these exemptions to Allegheny, or to removing the single-plane restrictions in condition (12).

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Since the Board has previously transferred exemption authority to the surviving carrier of a merger,^{38/} and there is no reason to depart from this precedent, it is hereby found that Lake Central's outstanding exemption authority should be transferred to Allegheny.^{39/}

Condition (12) of Lake Central's certificate prohibits the carrier from furnishing single-plane service in the following markets: Erie-Washington, Pittsburgh-Baltimore, Pittsburgh-Buffalo, and Pittsburgh-Washington. Allegheny currently has one-stop authority in these markets and provides one-stop service between Erie and Washington and between Pittsburgh and Buffalo. The Pittsburgh-Baltimore and Pittsburgh-Washington single-plane restrictions are intended to protect Allegheny from Lake Central's competition, but, of course, the merger will remove that risk. Instead, the applicants now request that the single-plane restrictions be changed to one-stop restrictions to permit better scheduling by the surviving carrier to the Lake Central intermediate points. The applicants allege that they could thereby schedule service between Buffalo and

^{38/} Alaska-Cordova Merger Case, supra; and Eastern-Mackey Merger Case, Order E-24427, November 22, 1966.

^{39/} The following exemption authority is involved: (1) all-cargo flights authorized between Indianapolis, on the one hand, and Kokomo-Logansport-Peru and Muncie-Anderson-New Castle, on the other, and between Muncie-Anderson-New Castle and Lima (Order E-24126, August 25, 1966); (2) nonstop authority granted between Lafayette and Terre Haute on flights originating or terminating at Chicago (Order E-24243, September 28, 1966); (3) authorized to serve Dayton as an intermediate between Muncie-Anderson-New Castle and Cincinnati on segment 2(b)(ii) (Order E-25023, April 21, 1967); and (4) authorized to operate nonstop between Elkins and Morgantown, W. Va., on flights serving Pittsburgh (Order E-25557, August 18, 1967).

1276

52.

Pittsburgh via Erie, between Erie and Washington via Pittsburgh, Johnstown and Altoona, and between Pittsburgh and Baltimore/Washington via Clarksburg and Morgantown. Such services would not be competitive and are expected to be of additional convenience to the traveling public. As indicated, there has been no objection raised to the requested amendment of the restrictions.

In view of the foregoing, it is hereby found that condition (12) of Lake Central's certificate for route 88 should be amended to permit the holder of the certificate to schedule service to a minimum of one intermediate point between Erie, Pa., and Washington, D. C.; Pittsburgh, Pa., and Baltimore, Md.; Pittsburgh, Pa., and Buffalo, N.Y.; and between Pittsburgh, Pa., and Washington, D. C.

CONDITIONS OF APPROVAL

In addition to the conditions already discussed with respect to the labor protective provisions, certain accounting conditions intended to forestall the inflation of asset values, which are usually adopted by the Board in merger proceedings, will be included in the accompanying order.

The Akron-Canton parties ask that, as a condition of approval of the merger, the Board retain jurisdiction of the proceeding in order to insure them of the service which the applicants propose. The basis for their request appears to be their dissatisfaction with Lake Central's record of service at the Akron-Canton airport.

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There is no reason to believe, nor any evidence to suggest, that Allegheny, the surviving carrier, which has a history of reliable service, will fail to honor the service proposals made in this case. Indeed, as the findings herein demonstrate, it is anticipated that the merged carrier will improve traveling convenience over the new system by adding and improving schedules as projected. In any event, even assuming that Allegheny would not operate the services proposed herein for Akron-Canton, the Board has no authority -- short of a proceeding regarding adequacy of service pursuant to section 404 of the Federal Aviation Act -- to require the surviving carrier to maintain particular flight schedules. Of course, the Board may act under the authority of section 404 without retaining jurisdiction of this proceeding. In view of all of the foregoing, the request of the Akron-Canton parties is hereby denied.

SUMMARY OF FINDINGS AND CONCLUSIONS

The merger of Allegheny and Lake Central will be consistent with the public interest and should, therefore, be approved, subject to appropriate conditions. Accordingly, Lake Central's certificate of public convenience and necessity for route 88, and its outstanding exemption authority, should be transferred to Allegheny as the surviving carrier.

The joinder of the two carriers will create an integrated route system reaching from the northern sector of the Atlantic seaboard to the midwest. It will open up opportunities for new through services and thereby increase traveling convenience for a substantial number of air passengers. The merger will also enable Allegheny to improve service with better aircraft, achieve

278

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more effective utilization of equipment, and eliminate duplicate facilities and services.

As the surviving company, Allegheny, which has a record of vigorous management and as a leader among the local service carriers as measured by various indicia of traffic development, should be able to revivify the operations of Lake Central which has lately suffered financial reverses and reductions in service. After the initial year of service and over the longer term, the record supports the conclusion that Allegheny will not only be able to improve local and through service, but do so with a substantial prospect of becoming subsidy-free reasonably soon.

During the forecast year the merged company may be expected to earn \$595,000 more operating profit than the total forecast by the applicants for their independent operations. However, the total economic benefit of the merger is projected as \$902,000, an amount which represents the effect, pursuant to the Board's actual tax policy, of adding to the above operating profit the \$307,000 Federal tax saving Allegheny will enjoy after applying part of Lake Central's net operating loss carryover. Thus, the merger is expected to permit a subsidy-need reduction of \$902,000.

In connection with the determination of the license fees which will be due pursuant to Part 389 of the Board's Organization Regulations, as amended effective March 1, 1968, the increase in transport revenues attributable to the merger in the first full year of operations is estimated at \$3,733,000.

2 1279

55.

The evidence establishes that no fraud, duress or collusion was involved in the determination of the consideration for the merger. The conversion ratio for exchange of stock was arrived at as a result of arm's length bargaining, is not adverse to the interests of Allegheny, Lake Central, or the public, and is considered reasonable.

There is no contention by any party or any evidence that the merger will result in creating any monopoly or monopolies and thereby restrain competition, or jeopardize another air carrier not a party to the merger.

The inclusion of conditions acceptable to the applicants which incorporate the standard labor protective provisions adopted in the United-Capital Merger Case will safeguard the interests of the employees of the two companies. There is no evidence that the merger will result in any economic injury to any of the employees of either carrier, or that various amendments of the standard labor protective provisions which have been proposed by some of the labor union intervenors should be adopted for the employees' protection.

No persuasive reason has been offered for granting the request of certain labor union intervenors that the order of approval herein require, as a condition of the merger, that Allegheny assume the obligations of Lake Central's collective bargaining agreements. The dispute between Allegheny and the unions affected by Allegheny's disavowal of the Lake Central labor contracts is a matter to be settled between the parties. It has not been demonstrated, as a matter of law or policy, that the Board is the proper forum to resolve such a dispute.

288

56.

The Board should retain jurisdiction of the proceeding to permit such amendments, modifications, and additions to the labor protective provisions as the circumstances may require.

The Akron-Canton parties have failed to give any reasons or evidence which would warrant granting their request that the Board, as a condition of approval of the merger, retain jurisdiction of the proceeding to insure that they receive the service proposed by the applicants.

The conditions of approval should include certain accounting provisions usual in Board orders approving mergers which are designed to prevent the inflation of asset values.

Condition (12) of Lake Central's certificate for route 88 should be amended to permit the holder of the certificate to schedule service to a minimum of one intermediate point between Erie, Pa., and Washington, D. C.; Pittsburgh, Pa., and Baltimore, Md.; Pittsburgh, Pa., and Buffalo, N.Y.; and between Pittsburgh, Pa., and Washington, D. C.

The transfer to Allegheny of Lake Central's exemption authority and certificate of public convenience and necessity should be stayed until the determination in an ancillary rate proceeding of the ad hoc adjustment reflecting the economic impact of the merger.

An appropriate order is attached.

Milton H. Shapiro
Milton H. Shapiro
Hearing Examiner

April 16, 1968

Attachments

**FORECASTS OF FINANCIAL RESULTS FOR 12 MONTHS ENDING 3-31-69
COMPARISON OF SEPARATE CARRIER AND MERGED CARRIER OPERATIONS**

(Dollars in Thousands)

Merged Operation		Forecast In Initial Decision 2/ Decision 1/	
	Forecast of Applicants 1/	Forecast of BOR	
As Separate Carriers 1/			
Passenger Revenue	\$ 82,996	\$ 85,940	\$ 86,391
Other Revenue	<u>12,852</u>	<u>13,142</u>	<u>13,190</u>
Total Operating Revenue	<u>95,848</u>	<u>99,082</u>	<u>99,581</u>
Direct Expense	47,787	49,526	49,433
Indirect Expense	<u>40,525</u>	<u>41,933</u>	<u>42,065</u>
Total Operating Expense	<u>88,312</u>	<u>91,459</u>	<u>91,450</u>
Operating Profit	\$ 7,536	\$ 7,623	\$ 8,307
Subsidy Need Reduction	(6,557)	\$ 87	\$771
Non-operating Items & Provision for Taxes	(6,557)	(6,250)	307
Net Profit	\$ 979	\$ 2,057	\$1,078
Total Subsidy Need Reduction			

1/ JE-205; JE-207 (Rev.); BOR Brief to Examiner, Appendix A.

Appendix A
Page 1 of 1

1281

FINANCIAL RESULTS FOR YEAR ENDING 3-31-69
EXAMINER'S FORECAST FOR THE MERGED OPERATION

(Dollars in Thousands)

	<u>As Separate Carriers 1/</u>	<u>Effect of Merger</u>	<u>Cost Changes</u>	<u>Total</u>	<u>Merged</u>
Passenger Revenue	\$82,996	\$3,395		\$3,395	\$86,391
Other Revenue	<u>12,852</u>	<u>338</u>		<u>338</u>	<u>13,190</u>
Total Operating Revenue	<u>\$95,848</u>	<u>\$3,733</u>		<u>\$3,733</u>	<u>\$99,581</u>
Direct Expense	47,787	1,238	408	1,646	49,433
Indirect Expense	<u>40,525</u>	<u>1,731</u>	<u>(239)</u>	<u>1,492</u>	<u>42,017</u>
Total Operating Expense	<u>88,312</u>	<u>2,969</u>	<u>169</u>	<u>3,138</u>	<u>91,450</u>
Operating Profit	7,536	764	(169)	595 2/	8,131
Non-operating Items and Provision For Taxes	<u>(6,557)</u>	<u>307</u>		<u>307 3/</u>	<u>(6,250)</u>
Net Profit	\$ 979	\$ 764 4/	\$138 4/	\$ 902	\$ 1,881

Appendix B
Page 1 of 1

1282

- 1/ JE-205; JE-207 (Rev.). BOR Brief to Examiner, Appendix A.
 2/ Operating subsidy need reduction.
 3/ Loss carry forward; non-operating subsidy need reduction.
 4/ Appendix C.

SUMMARYSUBSIDY NEED IMPACT OF THE MERGER
YEAR ENDING MARCH 31, 1969

	<u>Applicants' Estimate</u>	<u>Adjusted Bureau Estimate</u>	<u>Examiner's Estimate</u>
A. Operating Economies			
I. Through Services 1/			
Passenger Revenue	\$ 2,943,763	\$ 3,613,665	\$ 3,395,000
Other Revenue	290,620	344,000	338,310
Total Revenue	\$ 3,234,383	\$ 3,957,665	\$ 3,733,310
Direct Expense	1,238,350	1,238,350	1,238,350
Indirect Expense	1,568,757	1,816,299	1,731,000
Total Expense	2,807,107	3,054,649	2,969,350
Operating Profit	\$ 427,276	\$ 903,016	\$ 763,960 1/
II. Cost Changes			
Indirect Expense - Decreases	\$ 674,369	\$ 781,169	\$ 781,169
- Increases	1,014,878	913,083	949,910
Net Increase	\$ 340,509	\$ 131,914	\$ 168,741
B. Non-operating Contingency			
Provision For Income			
Taxes Before Merger			
Decrease		\$ 306,602	\$ 306,602 2/
C. Combined Effect of Adjusted Through Services and Cost Changes on Subsidy Need.			
A.I Through Services-			
Operating Profit	\$ 427,276	\$ 903,016	\$ 763,960
A.II Indirect Expense Increase	\$ 340,000	\$ 131,914	\$ 168,741
Total Operating Subsidy Need Reduction	\$ 87,276	\$ 771,102	\$ 595,219
B. Income Tax Carry Forward		\$ 306,602	\$ 306,602
Total Subsidy Need Reduction	\$ 87,276	\$ 1,077,704	\$ 901,821

1/ Appendix D.
2/ Appendix E.

NET CHANGES IN OPERATING PROFIT DUE TO THROUGH SERVICES
YEAR ENDING 3-31-69

<u>Projected By Applicants (JE-255-A)</u>	<u>Adjusted Bureau Estimate</u>	<u>Examiner's Estimate</u>
\$ 2,943,763	\$ 3,613,665	\$ 3,395,000 <u>1/</u>
<u>290,620</u>	<u>344,000</u>	<u>338,310 <u>2/</u></u>
Total Revenue	\$ 3,957,665	\$ 3,733,310
Other Revenue		
Passenger Revenue		
Direct Expense	\$ 1,238,350	\$ 1,238,350
Indirect Expense	1,568,757	1,816,299
Total Operating Expense	<u>\$ 2,807,107</u>	<u>\$ 3,054,649</u>
Operating Profit	<u>\$ 427,276</u>	<u>\$ 903,016</u>
		<u>\$ 763,960</u>

1/ Appendix F

116,243 PAX @ 190 lbs. (Appendix F)
58,022,000 @ 190 lbs. (Appendix F)
Other @ 11.2% (JE-256 (Rev.))

617,354 @ 54.8¢ (JE-255 (Rev.))

<u>Tons</u>	<u>Ton Miles</u>
11,043	5,512,090
<u>1,237</u>	<u>617,354</u>
<u>12,280</u>	<u>6,129,444</u>
	<u>338,310</u>
<u>Through Service</u>	
<u>Merged Carrier</u>	
<u>Unit Cost</u>	<u>Y/E 3-31-69</u>
<u>Units</u>	<u>Cost (000)</u>

Weighted Departures
Revenue Tons Originated
Revenue Ton Miles
Weighted Station Units
Total

2/

<u>Weighted Departures</u>	<u>Revenue Tons Originated</u>	<u>Revenue Ton Miles</u>	<u>Weighted Station Units</u>	<u>Total</u>
\$ 5,1317 36,9516 .137132 .0355	57,463 12,280 6,129,444 3,982,186	\$ 295 454 841 <u>141</u>		\$1,731

ESTIMATES OF COST CHANGES
YEAR ENDING MARCH 31, 1969

	<u>Cost Changes</u>		
	<u>Decreases</u>	<u>Increases</u>	<u>Total</u>
Applicants' Estimate - Joint Exhibit No. 264 (Rev.)	\$ 674,369	\$1,014,878 1/	\$ 340,509
<u>Bureau Adjustments:</u>			
<u>Joint Exhibit No. 264 (Rev.)</u>			
A. General & Administrative	100,000	2/	
F. Legal	6,800	3/	
O. Training		(57,129) 4/	
P. Standardization - Aircraft Exteriors		(35,766) 5/	
- Ground Equipment Paint		(8,900) 6/	
<u>Joint Exhibit No. 241 (Rev.)</u>			
Provision For Income Taxes Before Merger	306,602	7/	
Total Bureau Adjustments	\$ 413,402	\$ (101,795)	\$ (515,197)
<u>Examiner's Adjustments:</u>			
Pilots Training Costs		36,827 8/	36,827
Total Adjustments	\$ 413,402	\$ (64,968)	\$ (478,370)
Subsidy Need Reduction Per Initial Decision.	\$1,087,771	\$ 949,910	\$ (137,861)

- 1/ Includes correction reducing cost increases by \$21,958. (TR. 331)
 2/ To eliminate judgement contingency provision as being conjectural.
 3/ To recognize experience for year ended September 30, 1967 as normal level
 of Lake Central's operating expenses.
 4/ Eliminates pilot and maintenance personnel training costs as being an
 excessive charge to the first year of the merged operations.
 5/ Deletes two-thirds of the total cost (\$53,648) as an offset for the first
 year savings of Lake Central's operating expenses.
 6/ Offsets one-half of the total cost (\$17,800) as being the first year
 savings of Lake Central's operating expenses.
 7/ Reflects savings of federal income tax expense (24% of \$1,277,510) due
 to offset of Lake Central's tax loss carry-forward credits in the first year
 of the merger.
 8/ Examiner recognizes \$36,827 of pilot training costs.

- 4/ Competitive: actual ratios by market for 1966 (PIT-YIZ estimated); BOS-CVG reduced to 6%.
 First single-plane ratio of 20% in these markets from Jt. Exh. 258 (Rev.).
- 5/ Competitive: Exh. BOR-R-3 (Rev.); first single-plane as per Jt. Exh. 258 (Rev.).
- 6/ Nonstop mileages over proposed routings.
- 7/ Prop first-class fare, except BOS-CVG & BOS-IND which are jet coach fares.
- 8/ 85% applied in competitive markets only.
- 9/ Joint Exhibits 258 (Rev.), 202 (Rev.), 200.
- 10/ Fare rounding upward or downward to the nearest dollar. Jt. Exh. 255A.
- 11/ Year ending 3-31-69; i.e., includes competitive passengers and revenue passenger miles at 85% as follows:

<u>Passengers</u>	<u>RPM's (000)</u>
-------------------	--------------------

First normal year

69,642	47,951
x 85%	x 85%
59,196	40,758

12/ Allegheny's recent experience. (Nov. 67 (Exh. T-5 p. 7))

13/ As per Jt. Exh. 260 (Rev.) with participation rates in competitive markets at 85% of those shown above, and at an average yield of 5.75¢ per rpm.
14/ Since the Examiner has not accepted the applicants' contention that the merged carrier will have no connecting traffic in markets over 400 miles long, the 20% ratio is also applied to the traffic in the Toronto-Cincinnati market.

1288

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Issued under delegated authority

ALLEGHENY-LAKE CENTRAL MERGER CASE : Docket 19151

ORDER

A full public hearing having been held in the above-entitled proceeding and the Examiner, upon consideration of the record, having issued an initial decision containing his findings and conclusions, pursuant to authority delegated to hearing examiners under Rule 27 of the Rules of Practice in Economic Proceedings, which initial decision is attached hereto and made a part hereof.

IT IS ORDERED THAT:

1. Subject to the conditions specified below, the joint application of Allegheny Airlines, Inc. (Allegheny) and Lake Central Airlines, Inc. (Lake Central), in Docket 19151, for approval of the agreement of October 18, 1967, as amended by a supplement dated January 23, 1968, providing for a merger of these two companies, and for approval of the transfer to Allegheny of the certificate of public convenience and necessity issued to Lake Central for Route 88 and of all exemption authority held by Lake Central be and it hereby is granted;
2. The transfer to Allegheny of the certificate of public convenience and necessity issued to Lake Central for Route 88 and of all exemption authority held by Lake Central be withheld until the conclusion of any ancillary rate proceeding that may be necessary in order to adjust the subsidy payable to Allegheny, as the surviving carrier; 1/
3. The approval granted herein is subject to the following conditions:

- (a) That in accounting for the merger transaction as a pooling of interests, assets and liabilities shall be transferred to Allegheny at the values shown on the books of Lake Central as of the effective date of the merger as defined in the merger agreement, and that a plan of accounting for the merger, including a balance sheet of Lake Central prior to the merger and proposed

1/ Such a rate proceeding would take into account the economic impact of the merger.

1288

- 2 -

general journal entries to record the transaction on Allegheny's books, shall be submitted to the Board's Bureau of Accounts and Statistics for prior approval;

(b) That for ratemaking or other regulatory purposes the approval granted herein shall not in any manner be relied upon as a basis for augmenting the investment value of the certificate, property, and other assets to be acquired by Allegheny, nor shall such approval be deemed a determination for ratemaking or other regulatory purposes of the reasonableness of any costs or charges claimed by Allegheny or Lake Central under the merger agreement;

(c) That Allegheny shall be subject to the labor protective provisions imposed by the Board in the United-Capital Merger Case, 33 CAB 307 (1961); provided, however, that the Board reserves jurisdiction to make such amendments, modifications, and additions to the labor protective provisions as the circumstances may require;

4. At such time as Allegheny submits to the Board a statement indicating its full acceptance of the conditions imposed by paragraphs 2 and 3 above and makes an appropriate showing that all necessary steps have been completed for the consummation of the aforementioned agreement of merger, an appropriate Board order will transfer to Allegheny the certificate of public convenience and necessity held by Lake Central authorizing it to engage in air transportation over Route 88, and all exemption authority held by Lake Central, and will also reissue the latter certificate in the name of Allegheny;

5. This order shall become effective as the final order of the Board on the 31st day after the date of service of this order and the initial decision attached hereto, unless a petition for discretionary review is filed within 25 days after service hereof in accordance with Rule 28 of the Rules of Practice in Economic Proceedings (14 C.F.R. 302.28) or the Board issues an order to review upon its own initiative. If a petition for discretionary review is timely filed or if action to review is taken by the Board upon its own initiative, the effectiveness of this order shall be stayed until further order of the Board.



Milton H. Shapiro
Hearing Examiner

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CIVIL AERONAUTICS BOARD

BEFORE THE
CIVIL AERONAUTICS BOARD
WASHINGTON, D.C. 20025

In the Matter of :

ALLEGHENY - LAKE CENTRAL : Docket 19151
MERGER CASE :
:

AIR LINE DISPATCHERS ASSOCIATION

PETITION FOR DISCRETIONARY REVIEW

Joseph A. Sickles
General Counsel
Air Line Dispatchers Association
4720 Montgomery Lane
Bethesda, Maryland 20014
656-0500

Of Counsel:

Sickles, Goldberg & Sickles
Bethesda, Maryland

May 17, 1968

1281

CONTENTS

	Page
I. STATEMENT OF THE CASE	1
II. STATEMENT OF FACTS	2
III. ISSUE PRESENTED	3
IV. ARGUMENT	4
V. CONCLUSION	6

BEFORE THE
CIVIL AERONAUTICS BOARD
WASHINGTON, D.C.20025

IN THE MATTER OF :
ALLEGHENY-LAKE CENTRAL : Docket No. 19151
MERGER :
:

PETITION FOR DISCRETIONARY REVIEW

Comes now the Air Line Dispatchers Association, (hereinafter "ALDA") by its attorneys, Sickles, Goldberg & Sickles, and petitions the Board for discretionary review in accordance with Section 302.28 (a) (2) (iii) of the Procedural Regulations, Rules of Practice in Economic Proceedings.

I. STATEMENT OF THE CASE

On or about October 18, 1967, Allegheny Air Lines (herein "Allegheny") and Lake Central Airlines (herein "LCA") entered into an agreement; under the terms of which LCA would be merged into Allegheny. Subsequently, those carriers filed a joint application to the Civil Aeronautics Board (herein "CAB") requesting approval of that agreement. On or about October 24, 1967, ALDA petitioned to intervene in these proceedings. The petition was granted on or about November 21, 1967.

On or about April 26, 1968 CAB Examiner Milton H. Shapiro issued his Initial Decision in the above-captioned matter. It is noted that under appropriate Rules of Practice and Economic Proceedings the referred to Decision becomes effective as the

final Order of the Board unless Petition for Discretionary Review is filed within the appropriate times, or unless the Board on its own initiative, determines to review. The ground for this petition is that Trial Examiner Shapiro erred in his Initial Decision on a question involving substantial and important questions of law, policy or discretion.

II. STATEMENT OF FACTS

LCA and ALDA are parties to a collective bargaining agreement dated June 30, 1966. Section XVI of said agreement is as follows:

"This Agreement shall be effective as of July 1, 1966 and shall continue in full force and effect until July 1, 1969 and shall renew itself without change until each succeeding anniversary thereafter, unless written notice of the intended change is served in accordance with Section VI, Title I, of the Railway Labor Act as amended, by either party hereto at least thirty (30) days prior to the anniversary in any year."

Section I of the Agreement between Lake Central and ALDA provides:

"RECOGNITION AND SCOPE

(a) The Association has furnished evidence in accordance with the provisions of the Railway Labor Act, as amended, that it has been duly designated as the representative of the Aircraft Dispatchers and Assistant Dispatchers employed by the Company and in their behalf to negotiate and conclude an agreement with the Company covering compensation, rules and working conditions. It is understood that this agreement covers the performance of the dispatch function and the furnishing of the dispatch facility to the Company.

1751

(b) It is further understood and agreed that in the event of a sale, this agreement shall be binding upon the successors or assignees of the Company. In the event of consolidation or merger, the Company and the Dispatchers will meet prior thereto and negotiate proper provisions for the protection of employee's seniority and other rights under this agreement, in accordance with the provisions of the Railway Labor Act, as amended.

Through the testimony of Barnes, at the February 6, 1968 hearing, the following was established:

(a) The merged carrier will continue to supply the same basic service to the public as do the separate carriers individually at the present time.

(b) The combined dispatch personnel will continue to perform the same basic service to the merged carrier as the dispatch personnel perform for the individual carriers at the present time.

(c) Allegheny Dispatchers are neither represented by a labor organization nor covered by a collective bargaining agreement.

(d) Representatives of ALDA were neither invited to, nor did they participate in, negotiations of the agreement to merge.

(e) Other commitments of LCA will be honored by the merged carrier (see Article VI and VII; Agreement to Merge).

(f) The opinion of President Barnes as stated in paragraph I, 4 above, is based solely on "advice of counsel."

III ISSUE PRESENTED

The issue presented is that the Hearing Examiner committed error by recommending approval of the merger without proper labor protective provision and the citing that the Board should not further extend the labor protective provisions necessary in this merger.

IV ARGUMENT

Trial Examiner Shapiro states repeatedly in his Initial Decision that continuity of contract is not an issue for the Board to decide. However, the Board has historically accepted the task of providing the necessary labor protective provisions in mergers in the airline industry. Some labor protective provisions have been included in the Initial Decision of the Trial Examiner. But it is a question of adequacy that faces the Board in its decision to approve or disapprove the Initial Decision. Apparently, Examiner Shapiro does not put much stock in the need for adequate labor protective provisions as is evidenced by his insistence that the provisions of the United-Capital merger case (33 CAB 307) are sufficient in and of themselves.

The Board should look to the National Labor Policy as established by the Supreme Court in its recent decisions. The Trial Examiner seems to have missed the import of these decisions and prefers to limit them unnecessarily. Examination of John Wiley and Sons vs. Livingston, 376 US 543 (1964) will provide the Board with a guide in making its decision here. In Wiley the Supreme Court not only decided the merits of the immediate dispute but established a national policy to avoid industrial strife on occasions of mergers. This decision, indicating a change in National Labor Policy in situations involving mergers, would also logically indicate that there should

be a change in the labor protective provisions involved in this merger.

A decision by the Board in accordance with the prevailing National Labor Policy as demonstrated in Wiley and subsequent cases would avoid the otherwise inescapable result of undue delay and hardship of the parties, the intervenors, the employees and consequently, the public, resulting from subsequent legal action. A decision by the Board in accordance with Wiley would not work undue hardship upon Allegheny, as it has had no objection to maintaining labor agreements with other LCA labor organizations, namely; ALPA and IAMAW.

The Trial Examiner has failed to take a necessary position. Examiner Shapiro indicates the problem is one of representation to be decided by the National Mediation Board or one of contract to be decided by the courts. It is clear that the issue is not one of representation. A representation dispute could conceivably arise regardless of the Board's decision as to the continuity of contract of the LCA Dispatchers. In such an event the dispute will be handled by the National Mediation Board at the appropriate time within its established procedures. Nor is the question one of contract. The contract between LCA and ALDA as the bargaining representative for the LCA dispatchers is clear and establishes the right of the parties. The survival of the contract is a question of labor policy and not one of interpretation of the document.

The Trial Examiner has failed to grasp the concept of the

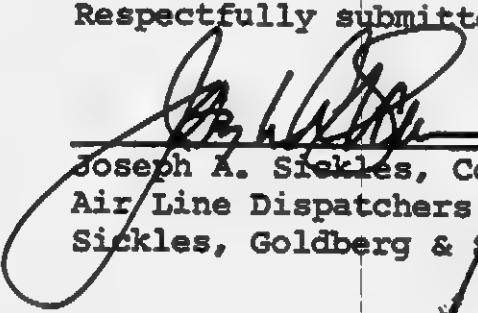
1257

concept of the ALDA request as stated in its brief. His recommendation of indecision is a negative attitude. The Board now has an opportunity to promote harmony and avoid the placing of the merger on a strained basis. It is therefore crucial that the Board disapprove the Trial Examiner's Initial Decision. ALDA can ask for nothing less than a complete revision of the labor protective provisions of the Decision, or in the alternative, disapproval of the entire Decision. Adoption of the Trial Examiner's Initial Decision will constitute the establishment of a detrimental precedent that is contrary to the aforementioned precedent established by the Supreme Court in Wiley. It is in reality determining the issue through indecisiveness. This is contrary even to the intent and goals of the Trial Examiner.

V. CONCLUSION

For the above reasons, ALDA submits that the Board should grant review of the instant petition and thereafter permit the filing of briefs and oral argument on the matter before the Board.

Respectfully submitted,

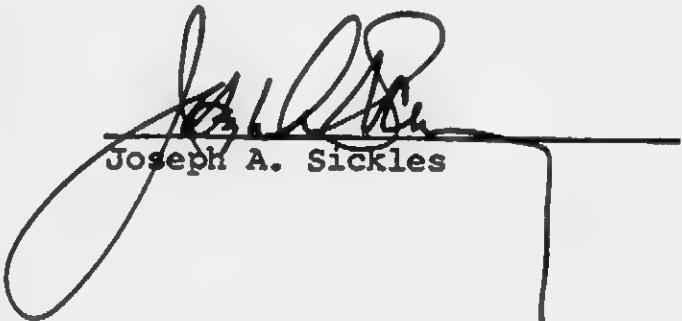

Joseph A. Sickles, Counsel
Air Line Dispatchers Association
Sickles, Goldberg & Sickles

May 17, 1968

1249

CERTIFICATE OF SERVICE

The undersigned certifies that on this 17th day of May, 1968, copies of the foregoing Petition for Discretionary Review here served, by U.S. mail with postage thereon prepaid, upon all individuals listed on page i of the Initial Decision of Examiner Shapiro.


Joseph A. Sickles

1300

BEFORE THE
CIVIL AERONAUTICS BOARD
WASHINGTON, D.C.

Application of

ALLEGHENY AIRLINES, INC.
and
LAKE CENTRAL AIRLINES, INC.

Docket 19151

under sections 401 and 408 of the
Federal Aviation Act for approval
of a merger agreement and transfer
of certificate.

ANSWER OF

ALLEGHENY AIRLINES, INC.

AND

LAKE CENTRAL AIRLINES, INC.

TO

ALDA PETITION FOR DISCRETIONARY REVIEW

On April 26, 1968, Examiner Milton H. Shapiro issued his Initial Decision finding that the merger of Allegheny Airlines, Inc. and Lake Central Airlines, Inc. is in the public interest and should be approved subject to certain conditions.

-2-

Among the conditions the Examiner attached to the approval was:

"(c) That Allegheny shall be subject to the labor protective provisions imposed by the Board in the United-Capital Merger Case, 33 CAB 307 (1961); provided, however, that the Board reserves jurisdiction to make such amendments, modifications, and additions to the labor protective provisions as the circumstances may require."

Except for the Air Line Dispatchers Association (ALDA), all parties to this proceeding including the labor union intervenors, have accepted the Examiner's findings on all issues, including the imposition of the United-Capital labor protective provisions.^{1/}

ALDA, however, takes the position that the Examiner erred in failing to amend the United-Capital labor protective provisions so as to require Allegheny, as a condition to approval of the merger, to assume the obligations of all outstanding collective bargaining agreements of Lake Central; including the ALDA collective bargaining agreement.

At the hearing, ALDA presented no facts to support its request. From the employees' standpoint, Allegheny has agreed to provide all employees the generally higher Allegheny prevailing wages and fringe

^{1/} Applicants have accepted the Examiner's finding of \$902,000 reduction in subsidy need. Allegheny, on May 21, 1968, filed an appropriate application for an ad hoc adjustment to Class Rate IV in Docket 18067.

-3-

benefits. The result which ALDA would impose would be impractical, since it would place former Lake Central employees working side by side with and performing the same duties as present Allegheny employees with lesser rates of pay, and subject to different rules and working conditions. Integration of personnel would be hindered, if employees in the same classification and work location were to be subject to different contracts or different rules or working conditions.

The Examiner dealt specifically and in detail with ALDA's contention (I.D. 42-47). He rejected the contention and concluded as follows:

"In view of all of the foregoing and the evidence of record, it is found, in accordance with the Board's decision in the United-Capital Merger Case, that the condition requested by the unions should not be imposed; that the dispute between the unions and Allegheny over Lake Central's collective bargaining agreements is a matter to be worked out between them; and that the unions have not demonstrated that the failure to require the requested condition will expose Lake Central's employees to any economic injury, nor have they offered any other persuasive reason why the Board, as a matter of policy, should grant the relief requested."

ALDA relies on John Wiley and Sons v. Livingston, 376 U.S. 543 (1964) to support its contention.^{1/} In

^{1/} On Brief to the Examiner, ALDA took the position that the issue was not representation, but one of contractual rights. On Petition for Review, however, ALDA changed its position. It now states that the question is not one of contract, but one of labor policy.

-4-

Applicants' Brief and Reply Brief, the ALDA position was discussed thoroughly. The Examiner considered Applicants' position to be the correct one. The controlling case is BRCA v. United Airlines, 325 F.2d 576 (6 Cir. 1963), cert. granted 377 U.S. 903, subsequently dismissed as improvidently granted 379 U.S. 26 (1964). Significantly, ALDA has never dealt with the issues and argument presented in Applicants' Brief.

Applicants submit that ALDA has presented nothing in its Petition for Discretionary Review to support its contention that there is a question involving substantial and important questions of law, policy or discretion requiring Board review.

Accordingly, Applicants request that the ALDA Petition be denied.

Respectfully submitted,

Edwin I. Colodny
Edwin I. Colodny

Albert F. Grisard.
Albert F. Grisard
Attorneys for Applicants

May 28, 1968

1307

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Order No. E-26968

Adopted by the Civil Aeronautics Board
at its office in Washington, D.C.,
on the 24th day of June, 1968

ALLEGHENY-LAKE CENTRAL :
MERGER CASE :

Docket 19151

ORDER DECLINING REVIEW

The Air Line Dispatchers Association has filed a petition for discretionary review of the initial decision of Examiner Milton H. Shapiro in the above-captioned matter. An answer to the petition has been filed jointly by Allegheny Airlines, Inc. and Lake Central Airlines, Inc.

Upon consideration of the matters presented and in light of the standards for discretionary review set forth in Rule 28(a)(2) of the Board's Rules of Practice, the Board declines to review the initial decision. 1/

ACCORDINGLY, IT IS ORDERED THAT:

1. The petition for discretionary review filed by the Air Line Dispatchers Association be and it hereby is denied; and
2. The examiner's initial decision shall become effective as the final order of the Board on June 24, 1968 and shall hereafter be identified as Order E-26967.

By the Civil Aeronautics Board:

MABEL McCART

(SEAL)

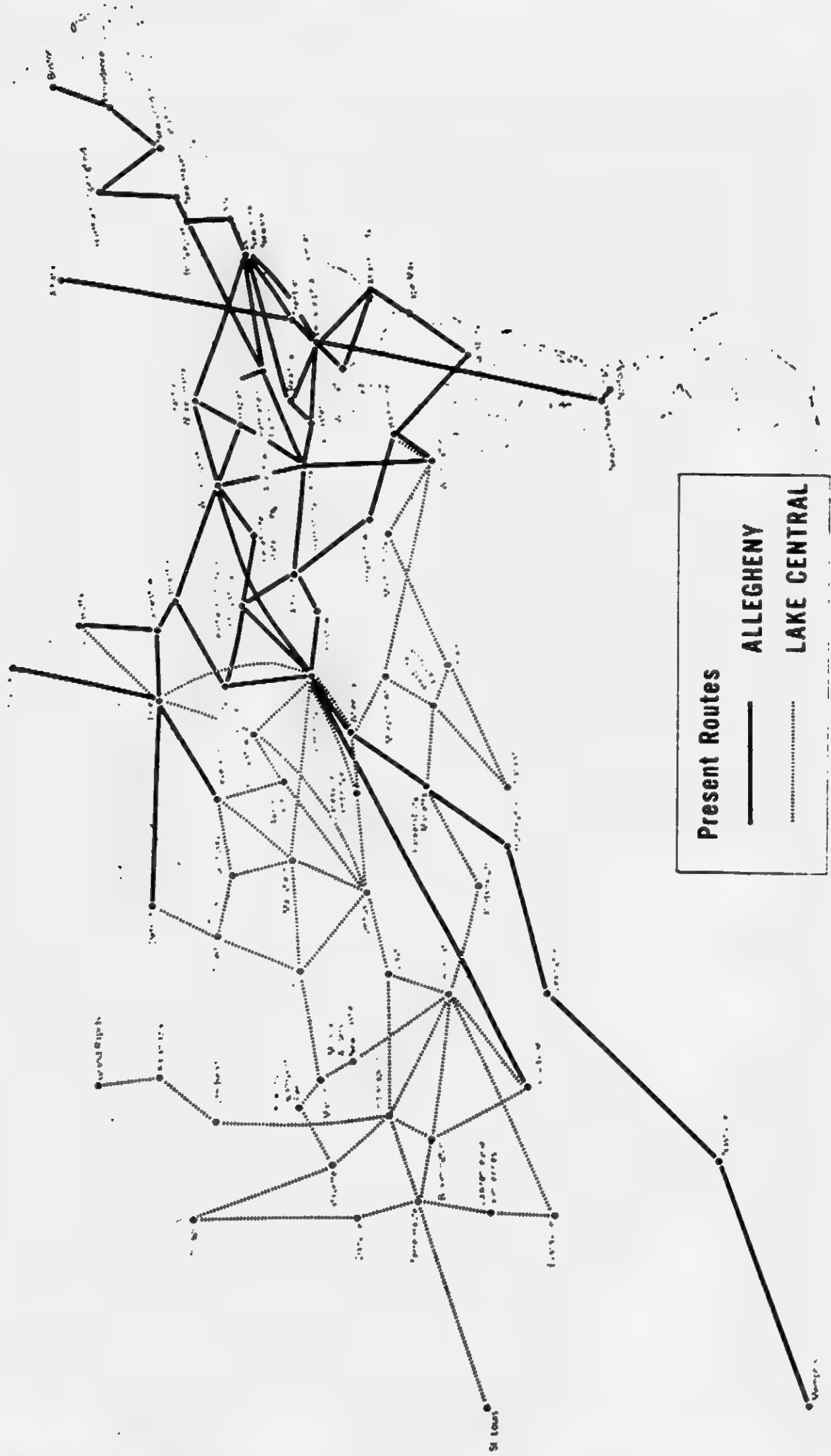
Acting Secretary

1/ In connection with the determination of the license fees which will be due pursuant to Part 389 of the Board's Organization Regulations, as amended effective March 1, 1968, the examiner found that the increase in transport revenue attributable to the merger in the first full year of operations is estimated at \$3,733,000 (I.D. 54). In accordance with the Board's practice, the further Board order referred to in paragraph 4 of the order attached to the initial decision will not be issued until Allegheny, in addition to complying with the terms set forth in that paragraph, has paid the license fee required by section 389.25(a)(2) of the regulations.

ALLEGHENY-LAKE CENTRAL MERGER CASE

DOCKET 19151

COMBINED ROUTE SYSTEM



BEFORE THE
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

ALLEGHENY-LAKE CENTRAL :
MERGER CASE :

Docket 19151

STATEMENT OF COMPLIANCE WITH CONDITIONS

TO: Civil Aeronautics Board

In Order E-26968 the Board has granted the application of Allegheny Airlines and Lake Central Airlines for approval of a merger. The order indicates that the approval is subject to conditions as set forth in paragraphs 2 and 3 of Order E-26967 and requires that a statement be submitted by the applicants indicating their full acceptance of the conditions imposed by these paragraphs.

The applicants have authorized the undersigned counsel to state herewith that said applicants fully accept and will abide by the conditions set forth in paragraphs 2 and 3 of Order E-26967.

Edwin I. Colodny
Edwin I. Colodny
Counsel for Allegheny Airlines, Inc.

Albert F. Grisard
Albert F. Grisard
Counsel for Lake Central Airlines, Inc.

Dated: June 25, 1968



JA-225

1379

CIVIL AERONAUTICS BOARD

WASHINGTON, D.C. 20428

IN REPLY REFER TO: B-12

19151

June 26, 1968

N O T I C E

Board Orders E-26927 and E-26968, served June 24, 1968, in Docket Number 19151, approved the merger of Allegheny Airlines, Inc. and Lake Central Airlines, Inc. and the transfer of the certificate for Route 88 to Allegheny Airlines, Inc., subject to an appropriate showing, among other things, that the license fee required by Section 389.25(a)(2) has been paid.

This is to certify that the above mentioned license fee was received by the Board on June 25, 1968, and that the condition respecting payment of such fee has therefore been met.

MABEL McCART

Acting Secretary

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 1st day of July, 1968

ALLEGHENY-LAKE CENTRAL :
MERGER CASE :

Docket 19151

O R D E R

By Orders E-26967 and 26968 dated June 24, 1968, the Board approved the merger of Allegheny Airlines, Inc. (Allegheny) and Lake Central Airlines, Inc. (Lake Central), with Allegheny being the surviving carrier, and the transfer to Allegheny of the certificate of public convenience and necessity issued and all other operating authority held by Lake Central. The orders provided that at such time as Allegheny submits to the Board a statement indicating its full acceptance of the conditions imposed in paragraphs 2 and 3 of Order E-26967, and makes an appropriate showing that all necessary steps have been completed for the consummation of the merger and that the license fee required by section 389.25(a)(2) of the regulations has been paid, the certificate of public convenience and necessity and all other operating authority held by Lake Central will be transferred to Allegheny, and Lake Central's certificate will be reissued in the name of Allegheny.

By a statement submitted June 25, 1968, Allegheny has advised the Board that it fully accepts the conditions imposed by paragraphs 2 and 3 of Order E-26967. The license fee required by section 389.25(a)(2) of the Board's Organization Regulations has been paid. Also, by Order E-26991 the Board is making an ad hoc adjustment in Class Rate IV to reflect a finding that the surviving carrier would realize an immediate annual economic benefit of \$901,821 by virtue of the merger. Allegheny and Lake Central have filed a written statement that they accept this adjustment and waive any and all further procedural steps in the matter (Docket 18067). In addition, Allegheny has made an appropriate showing that all necessary steps have been completed for consummation of the merger effective July 1, 1968, and has requested the transfer of the certificate of Lake Central to Allegheny effective on that date.

- 2 -

For administrative convenience we are incorporating in a single certificate all of the authority for air transportation heretofore held by Allegheny for Route 97 and by Lake Central for Route 88. In order to simplify the certificate, we have rearranged and grouped certain of the conditions and have eliminated condition (12) of Lake Central's certificate for Route 88, in accordance with the examiner's initial decision as approved by the Board.

In combining the authority heretofore contained in the two separate certificates into one new certificate, it is our intention neither to expand nor contract in any way the authority that Allegheny would have held had we simply transferred the separate certificate to its name without change. Nor do we intend, in rephrasing and combining several of the restrictions (e.g., (3), (5), and (22) in the amended and reissued certificate) thereby to place a new or different meaning on these restrictions.

ACCORDINGLY, IT IS ORDERED THAT:

1. The certificates of public convenience and necessity for Route 97 held by Allegheny Airlines, Inc., and for Route 88 held by Lake Central Airlines, Inc., be and they hereby are amended and reissued to Allegheny Airlines, Inc., in the form attached hereto.
2. Said certificate shall be signed on behalf of the Board by its Secretary, shall have affixed thereto the seal of the Board, and shall be effective on July 1, 1968.
3. The amended certificates of public convenience and necessity heretofore issued to Allegheny Airlines, Inc., for Route 97, effective on March 27, 1968, and to Lake Central Airlines, Inc., for Route 88 effective May 23, 1968, be and they hereby are canceled, effective July 1, 1968.
4. All other operating authority held by Lake Central Airlines, Inc., be and it hereby is transferred to Allegheny Airlines, Inc., effective July 1, 1968.

By the Civil Aeronautics Board:

MABEL McCART

Acting Secretary

(SEAL)

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Issued pursuant to
Order 68-7-1

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
FOR LOCAL OR FEEDER SERVICE
(as amended and reissued)

for Route 97

ALLEGHENY AIRLINES, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in air transportation with respect to persons, property, and mail, as follows:

1. Between the coterminal points Washington, D.C., and Baltimore, Md., the intermediate points Hagerstown, Md., Altoona and Johnstown, Pa., and the terminal point Pittsburgh, Pa.;
2. Between the coterminal points Washington, D.C., and Baltimore, Md., the intermediate points Salisbury, Md., Cape May and Atlantic City, N.J., Wilmington, Del., Philadelphia, Pa.-Camden, N.J., Trenton, N.J., and (a) beyond Trenton, the intermediate points New York, N.Y.-Newark, N.J., Islip, N.Y., Bridgeport and New Haven, Conn., Hartford, Conn.-Springfield, Mass., New London-Groton, Conn., and Providence, R.I., and the terminal point Boston, Mass., and (b) beyond Trenton, the terminal point Albany, N.Y.;
3. Between the terminal point Pittsburgh, Pa., the intermediate points Johnstown, Altoona, and Harrisburg-York, Pa., and (a) beyond Harrisburg-York, the intermediate point Hazleton, Pa., and the terminal point Scranton-Wilkes-Barre, Pa., and (b) beyond Harrisburg-York, the coterminal points Washington, D.C., and Baltimore, Md., (c) beyond Harrisburg-York, the intermediate point Allentown-Bethlehem-Easton, Pa., and the coterminal points New York, N.Y., and Newark, N.J., and (d) beyond Harrisburg-York, the intermediate points Lancaster, Pa., Philadelphia, Pa.-Camden, N.J., and (i) beyond Philadelphia, Pa.-Camden, N.J., the coterminal points New York, N.Y., and Newark, N.J., and (ii) beyond Philadelphia, Pa.-Camden, N.J., the terminal point Atlantic City, N.J.;

1385

JA-229

Allegheny #97
Page 2 of 9 pages

4. Between the terminal point Pittsburgh, Pa., the intermediate points Oil City-Franklin and Bradford, Pa., Jamestown, N.Y., and the terminal point Buffalo, N.Y.;
5. Between the terminal point Pittsburgh, Pa., the intermediate points Wheeling, Parkersburg, and Huntington, W.Va., Lexington, Ky., and the coterminous points Nashville and Memphis, Tenn.;
6. Between the terminal point Pittsburgh, Pa., the intermediate points Johnstown, Altoona, Clearfield-DuBois-Philipsburg, Bellefonte-State College, Williamsport, Hazleton, Scranton-Wilkes-Barre, and Allentown-Bethlehem-Easton, Pa., and (a) beyond Allentown-Bethlehem-Easton, the coterminous points Newark, N.J., and New York, N.Y., and (b) beyond Allentown-Bethlehem-Easton, the intermediate points Bridgeport and New Haven, Conn., Hartford, Conn.-Springfield, Mass., New London-Groton, Conn., and Providence, R.I., and the terminal point Boston, Mass.;
7. Between the alternate terminal points Cleveland, Ohio, and Detroit, Mich., the intermediate points Erie, Pa., Jamestown, N.Y., Bradford and Williamsport, Pa., and (a) beyond Williamsport, the intermediate point Scranton-Wilkes-Barre, Pa. and the coterminous points New York, N.Y., and Newark, N.J., and (b) beyond Williamsport, the intermediate points Harrisburg-York, Lancaster, and Reading, Pa., and (i) beyond Reading, the terminal point Philadelphia, Pa.-Camden, N.J., and (ii) beyond Reading, the coterminous points New York, N.Y., and Newark, N.J.;
8. Between the terminal point Philadelphia, Pa.-Camden, N.J., and the coterminous points Norfolk and Newport News, Va.;
9. Between the terminal point Louisville, Ky., and the terminal point Pittsburgh, Pa.
10. Between the coterminous points Washington, D.C., and Baltimore, Md., the intermediate points Martinsburg and Elkins, W.Va., and (a) beyond Elkins, the terminal point Charleston, W.Va., and (b) beyond Elkins, the intermediate points Clarksburg-Fairmont, W.Va., Parkersburg, W.Va.-Marietta, Ohio, Portsmouth and Cincinnati, Ohio, Indianapolis and South Bend, Ind., and Kalamazoo, Mich., and the terminal point Grand Rapids, Mich.;
11. Between the terminal point Chicago, Ill., the intermediate point Lafayette, Ind., and (a) beyond Lafayette, the terminal point Indianapolis, Ind., and (b) beyond Lafayette, the intermediate points Kokomo-Logansport-Peru and Marion, Ind., and (i) beyond

Marion, the intermediate points Lima and Mansfield, Ohio, and the terminal point Pittsburgh, Pa., and (ii) beyond Marion, the intermediate point Muncie-Anderson-New Castle, Ind., and the terminal point Cincinnati, Ohio;

12. Between the terminal point Chicago, Ill., the intermediate points Danville, Ill., and Terre Haute, Ind., and (a) beyond Terre Haute, the intermediate points Indianapolis, Ind., Dayton and Columbus, Ohio, and (i) beyond Columbus, the intermediate point Mansfield, Ohio, and the terminal point Cleveland, Ohio, and (ii) beyond Columbus, the intermediate points Akron-Canton and Youngstown, Ohio, and Erie, Pa., and the terminal point Buffalo, N.Y., and (b) beyond Terre Haute, the intermediate point Bloomington, Ind., and (i) beyond Bloomington, the terminal point Indianapolis, Ind., and (ii) beyond Bloomington, the terminal point Cincinnati, Ohio, and (c) beyond Terre Haute, the intermediate point Lawrenceville, Ill.-Vincennes, Ind., and the terminal point Evansville, Ind.;
13. Between the alternate terminal points Louisville, Ky., and Evansville, Ind., the intermediate points Cincinnati, Dayton, Columbus, Lima, and Toledo, Ohio, and the terminal point Detroit, Mich.;
14. Between the terminal point Detroit, Mich., the intermediate points Toledo, Sandusky, Cleveland, Akron-Canton, and Youngstown, Ohio, and the terminal point Pittsburgh, Pa.;
15. Between the terminal point Charleston, W.Va., the intermediate points Clarksburg-Fairmont, Morgantown, and Wheeling, W.Va., and Pittsburgh, Pa., and the terminal point Erie, Pa.;
16. Between the terminal point Dayton, Ohio, the intermediate points Columbus and Zanesville-Cambridge, Ohio, and (a) beyond Zanesville-Cambridge, the terminal point Pittsburgh, Pa., and (b) beyond Zanesville-Cambridge, the intermediate points Wheeling and Morgantown, W.Va., and the coterminous points Washington, D.C., and Baltimore, Md.;
17. Between the terminal point Louisville, Ky., the intermediate point Bloomington, Ind., and the terminal point Indianapolis, Ind.;

1337

Allegheny #97
Page 4 of 9 pages

18. Between the terminal point St. Louis, Mo., the intermediate point Terre Haute, Ind., and the terminal point Indianapolis, Ind.

The service herein authorized is subject to the following terms, conditions, and limitations:

(1) The holder shall render service to and from each of the points named herein, except as temporary suspensions of service may be authorized by the Board; and may begin or terminate, or begin and terminate, trips at points short of terminal points.

(2) The holder may continue to serve regularly any point named herein through the airport last regularly used by the holder to serve such point prior to the effective date of this certificate. Upon compliance with such procedure relating thereto as may be prescribed by the Board, the holder may, in addition to the service hereinabove expressly prescribed, regularly serve a point named herein, other than a point required to be served through a single airport, through any airport convenient thereto.

(3) On each trip operated by the holder over all or part of one of the eighteen numbered route segments in this certificate, the holder shall stop at each point named between the point of origin and point of termination of such trip on such segment, except a point or points with respect to which (a) the Board, pursuant to such procedure as the Board may from time to time prescribe, may by order relieve the holder from the requirements of such condition, (b) the holder is authorized by the Board to suspend service, (c) the holder is unable to render service on such trip because of adverse weather conditions or other conditions which the holder could not reasonably have been expected to foresee or control, or (d) paragraph (4), (5), (6), or (7) below is applicable.

(4) The holder on each trip scheduled over all or part of segment 3 or 7 may omit a point or points on such segment, subject to the following limitations:

(a) With respect to trips operated over segment 3, the holder shall schedule service to a minimum of one intermediate point between the following pairs of points:

Pittsburgh, Pa., and New York, N.Y.

Pittsburgh, Pa., and Newark, N.J.

Pittsburgh, Pa., and Washington, D.C.

Pittsburgh, Pa., and Baltimore, Md.

- (b) With respect to trips operated over segment 7, the holder shall schedule service to a minimum of four intermediate points between the following pairs of points:

Detroit, Mich., and New York, N.Y.
Detroit, Mich., and Newark, N.J.
Detroit, Mich., and Philadelphia, Pa.-
Camden, N.J.
Cleveland, Ohio, and New York, N.Y.
Cleveland, Ohio, and Newark, N.J.
Cleveland, Ohio, and Philadelphia, Pa.-
Camden, N.J.

Provided, That, if at least two daily round trips are scheduled to each intermediate point on segment 7, the holder shall schedule service:

- (i) to a minimum of three intermediate points between the following pairs of points:

Detroit, Mich., and New York, N.Y.
Detroit, Mich., and Newark, N.J.
Detroit, Mich., and Philadelphia, Pa.-
Camden, N.J.; and

- (ii) to a minimum of two intermediate points between the following pairs of points:

Cleveland, Ohio, and New York, N.Y.
Cleveland, Ohio, and Newark, N.J.
Cleveland, Ohio, and Philadelphia, Pa.-
Camden, N.J.

- (c) The holder shall schedule service to a minimum of two intermediate points between the following pairs of points:

Detroit, Mich., and Washington, D.C.
Detroit, Mich., and Baltimore, Md.
Cleveland, Ohio, and Washington, D.C.
Cleveland, Ohio, and Baltimore, Md.

138S

Allegheny #97
Page 6 of 9 pages

(5) If the holder has scheduled two daily round trips to a given point on segment 1, 2, 4, 5, 6, 10, 11, 12, 13, 14, 15, 16, 17, or 18, it may omit such point on any additional trips scheduled over all or part of such segment, subject to the following limitations:

- (a) The holder shall schedule service to a minimum of two intermediate points (1) between Pittsburgh, Pa., and Boston, Mass., and (2) between Dayton, Ohio, and Washington, D.C., or Baltimore, Md.:
Provided, That the two daily round trips to be scheduled to Hazleton, Pa., may be provided on segments 3 and/or 6.
- (b) The holder shall schedule service to a minimum of one intermediate point between the following pairs of points:

Charleston, W.Va., and Pittsburgh, Pa.
Chicago, Ill., and Cincinnati or Dayton, Ohio
Chicago, Ill., and Evansville or Indianapolis, Ind.
Chicago, Ill., and Pittsburgh, Pa.
Cincinnati, Ohio and Washington, D.C.
Cleveland, Ohio, and Indianapolis, Ind.
Columbus, Ohio, and Baltimore, Md., Buffalo, N.Y.,
or Washington, D.C.
Detroit, Mich., and Evansville, Ind.
Detroit, Mich., and Pittsburgh, Pa.
(exclusive of Cleveland, Ohio)
New York, N.Y.-Newark, N.J., and Washington, D.C.
New York, N.Y.-Newark, N.J., and Boston, Mass.
Pittsburgh, Pa., and Baltimore, Md., Buffalo, N.Y.,
or Washington, D.C.
Pittsburgh, Pa., and Hartford, Conn.-Springfield, Mass.
Pittsburgh, Pa., and New York, N.Y.-Newark, N.J.
Washington, D.C., and Albany, N.Y.: Provided, That this condition shall not prevent the holder from providing nonstop service between Albany, N.Y. and Friendship Airport and from holding out such service as service to Washington, D.C., so long as the holder apprises the public of the airport through which such Albany-Washington nonstop service is being provided.

- (6) Notwithstanding the provisions of paragraph (5) above, the holder may schedule nonstop service between Columbus and Youngstown, Ohio.

1330

Allegheny #97
Page 7 of 9 pages

- (7) If the holder has scheduled one daily round trip to Salisbury, Md., Cape May or Atlantic City, N.J., on segment 2, the holder may omit service to such point on any additional trips scheduled over all or part of segment 2.
- (8) Flights serving Boston, Mass., on the one hand, and Providence, R.I., or Hartford, Conn.-Springfield, Mass., on the other hand, shall originate or terminate at a point south or west of New York, N.Y.-Newark, N.J.
- (9) Flights serving Memphis and Nashville, Tenn., shall originate or terminate at a point north and east of Nashville.
- (10) The holder shall schedule nonstop service (a) between Detroit, Mich., and Cleveland, Ohio, only on flights originating or terminating at a point east or south of Cleveland; and (b) between Pittsburgh, Pa., and Cleveland, Ohio, only on flights originating or terminating at a point west or south of Cleveland.
- (11) Flights scheduled over segment 12 to serve Chicago, Ill., on the one hand, and Columbus, Cleveland, Akron-Canton, or Youngstown, Ohio, Erie, Pa., or Buffalo, N.Y., on the other hand, shall also serve Indianapolis, Ind.
- (12) Flights scheduled to serve Washington, D.C., on the one hand, and Grand Rapids or Kalamazoo, Mich., South Bend, or Indianapolis, Ind., or Cincinnati, Ohio, on the other hand, shall also serve one intermediate point east of Cincinnati on segment 10.
- (13) Flights scheduled to serve Cincinnati, Ohio, and Indianapolis, Ind., shall also serve a point beyond Cincinnati or Indianapolis.
- (14) Flights scheduled to serve Charleston, W.Va., and Washington, D.C., shall also serve Elkins or Martinsburg, W.Va.
- (15) Flights scheduled to serve Bloomington, Ind., on segment 17 shall also serve Louisville, Ky., and Indianapolis, Ind.
- (16) Flights scheduled to serve Louisville, Ky., and any other point on segment 13 shall also serve Cincinnati, Ohio.
- (17) The holder shall not schedule single-plane service between Albany, N.Y., on the one hand, and Pittsburgh, Pa., or New York, N.Y.-Newark, N.J., on the other hand.

1391

JA-235

Allegheny #97
Page 8 of 9 pages

(18) Harrisburg-York, Pa., on segments 3 and 7 shall be served through a single airport.

(19) The intermediate point Cape May, N.J., shall be served only during the period commencing not earlier than June 1, or later than June 15, and terminating not earlier than September 1, or later than September 15, inclusive, of each year, except that the Board may enlarge said period if the Board determines that said period does not permit adequate seasonal service.

(20) The holder is authorized to render flagstop service on segments 10 through 18 by omitting the physical landing of its aircraft at any intermediate point or segment junction point scheduled to be served on a particular flight: Provided, That there are no persons, property, or mail on the aircraft destined for such point, and no such traffic available at such point for the flight at the scheduled time of departure.

(21) Services performed over segments 3 and 6 between Allentown-Bethlehem-Easton, Pa., on the one hand, and the point served immediately prior to and the point served immediately after Allentown-Bethlehem-Easton, Pa., on the other hand, shall be ineligible for subsidy, and any compensation for the carriage of mail between such points shall be limited to a service mail rate to be paid entirely by the Postmaster General.

(22) The holder's authority to engage in the transportation of mail with respect to (a) operations conducted solely pursuant to the authority granted by Order E-23716, May 20, 1966, Order E-24403, November 14, 1966, Order E-24808, March 2, 1967, Order E-25078, May 1, 1967, Order E-25847, October 17, 1967, and Order E-25907, October 31, 1967, (b) turnaround service between Providence, R.I., and New York, N.Y.-Newark, N.J., (c) nonstop service between New London-Groton, Conn., and New York, N.Y.-Newark, N.J., (d) nonstop service between Baltimore, Md., and Cincinnati, Ohio, or Indianapolis, Ind., (e) nonstop service between Louisville, Ky., and Cincinnati, Ohio, (f) nonstop service between Pittsburgh, Pa., and Columbus or Dayton, Ohio, and (g) service over segment 9, is limited to the carriage of mail on a nonsubsidy basis, i.e., on a service mail rate to be paid entirely by the Postmaster General, and the holder shall not be entitled to any subsidy with respect to such operations.

The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

Allegheny #97
Page 9 of 9 pages

1332

The services authorized by this certificate were originally established pursuant to a determination of policy by the Civil Aeronautics Board that in the discharge of its obligation to encourage and develop air transportation under the Civil Aeronautics Act, as amended, it is in the public interest to establish certain air carriers who will be primarily engaged in short-haul air transportation as distinguished from the service rendered by trunkline air carriers. In accepting this certificate, the holder acknowledges and agrees that the primary purpose of this certificate is to authorize and require it to offer short-haul, local or feeder, air transportation service of the character described above.

The holder acknowledges and agrees that it is entitled to receive only service mail pay for the mail service rendered or to be rendered solely in connection with the operations specified in paragraphs (21) and (22), and that it is not authorized to request or receive any compensation for mail service rendered or to be rendered for such operations in excess of the amount payable by the Postmaster General.

This certificate shall be effective on July 1, 1968.

The authorizations to serve (a) the portion of segment 10 east of Cincinnati, Ohio, (b) between Columbus and Akron-Canton, Ohio, on segment 12, (c) Cincinnati, Ohio, on segment 12, and (d) segment 16, exclusive of segment 16(a), shall expire on December 23, 1965. 1/

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 1st day of July, 1968.

MABEL McCART

Acting Secretary

(SEAL)

1/ On June 11, 1965, an application was filed in Docket 16232 for renewal of these authorizations.

provided, however, that the Board reserves jurisdiction to make such amendments, modifications, and additions to the labor protective provisions as the circumstances may require; * * *

11. Subsequently the Board issued an Order Declining Review, and stated therein as follows:

"2. The examiner's initial decision shall become effective as the final order of the Board on June 24, 1968 and shall hereafter be identified as Order E-26967."

Thus, the proposed merger is now completed, and the employees represented by the Petitioner are employed by Allegheny.

12. By letter dated June 25, 1968, Victor J. Herbert, President of the Petitioner, addressed Leslie O. Barnes, President of Allegheny, as follows:

"Dear Mr. Barnes:

"Congratulations on the successful conclusion of the merger of Lake Central Airlines into Allegheny Airlines.

"It is our hope and desire that we can maintain the same fine relationship with the merged company that we have achieved with the Lake Central management.

"It is now incumbent upon both of us to enter into immediate negotiations so that we can reach a collective agreement covering all of the employees now involved, as required in our collective bargaining agreement with Lake Central Airlines, Section 29 (c):

'The provisions of this Agreement shall be binding upon any successor or merged Company or Companies, or any successor in the control of the Company.'

"It would appear that two areas of action should be entered into at the earliest possible date. First, a merging of the seniority lists and, to accomplish this, we request that you send us a complete listing of all employees in the covered group listing name, classification, date of hire, station, and permanent home address. We already have this, of course, for the former Lake Central employees. The second area of action will be the holding of conferences forthwith to negotiate a collective agreement with the merged air line.

"We would appreciate your cooperation on these matters as soon as possible and advise us of the time and place for"

Sincerely yours,

15. Irrespective of the Board's disposition or lack of disposition of the Petitioner's claim of the continuing validity of its Lake Central collective bargaining agreement, and irrespective of the eventual outcome of a court of law resolution of the dispute between the Petitioner and Allegheny as concerns such disposition or lack of disposition, it nevertheless remains a fact that there exists no procedure under the Railway Labor Act for decertifying a collective bargaining representative. Assuming arguendo that the Petitioner's collective bargaining agreement with Lake Central is no longer valid or in force and effect, the Petitioner is still the duly authorized and certified (by the National Mediation Board) collective bargaining representative of a group of employees of Allegheny.

16. Allegheny has willfully and intentionally failed and refused to comply with the terms and provisions of the statutes set forth herein in the following particulars:

(a) Allegheny has willfully and intentionally refused to comply with Section 6, Title I, of the Railway Labor Act, in that Allegheny has refused to meet with the Petitioner, the duly and properly authorized and certified collective bargaining representative of a group of employees of Allegheny, for the purpose of negotiating a collective bargaining agreement for said group of employees.

(b) Allegheny has willfully and intentionally violated Paragraph Seventh, Section 2, Title I, and other provisions of the Railway Labor Act by unilaterally changing the rates of pay, rules or working conditions of those of its employees represented by the Petitioner.

(c) Allegheny has willfully and intentionally violated Paragraph First, Section 2, Title I, of the Railway Labor Act, in that it has refused to make and/or maintain

agreements concerning rates of pay, rules or working conditions for that group of its employees represented by the Petitioner.

(d) Allegheny has willfully and intentionally violated the terms and provisions of the Railway Labor Act by its avowed declaration not to recognize the existence of the agreement, and particularly Section 29 (c) thereof, between the Petitioner and Allegheny covering certain employees of Allegheny.

(e) Allegheny has willfully and intentionally violated the terms and provisions of the Railway Labor Act by refusing to meet and negotiate with the Petitioner, the duly and properly authorized and certified collective bargaining representative of a group of employees of Allegheny.

16. Allegheny further has willfully and intentionally failed and refused to comply with the terms and conditions of an order of this Board, namely: it has failed and refused to meet with the Petitioner, as required by Examiner Shapiro on Page 47 of his Initial Decision (subsequently adopted and identified as Order E-26967 of the Board), to work out the dispute between the Petitioner and Allegheny over the Petitioner's Lake Central collective bargaining agreement.

WHEREFORE, the Petitioner prays that, in accordance with the terms and provisions of Paragraph (g), Section 401, Title IV, of the Federal Aviation Act, this Board, after notice and hearings, shall issue its order, fixing therein a reasonable time for compliance by Allegheny, commanding obedience by Allegheny of the rules, regulations, terms, conditions or limitations found by the Board to have been violated by Allegheny; and, upon failure by Allegheny within such reasonable time fixed by the Board to obey such order,

1411

to alter, amend, modify, suspend or revoke, in whole or in part, any and all certificates possessed by Allegheny for intentional failure to comply with such order of this Board or any order, rule or regulation issued by the Board as a term, condition or limitation of such certificate or certificates.

Respectfully submitted,

WYATT JOHNSON
General Counsel, Air Line
Employees Association, International
Suite 509, 100 Biscayne Tower
Miami, Florida 33132

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing Petition of Air Line Employees Association, International, for Revocation upon all parties who appear of record in Docket No. 19151 by causing copies thereof, properly addressed, postage prepaid, to be mailed to them this 15th day of July, 1968.

Wyatt Johnson

UNITED-CAPITAL MERGER CASE
Civil Aeronautics Board Reports
33 CAB 307, Pages 342-347

APPENDIX A

Labor protective provisions

Section 1. The fundamental scope and purpose of the conditions specified in paragraph 2(c) of this order are to provide for compensatory allowances to employees who may be affected by the proposed merger of United and Capital approved by this order, and it is the intent that such conditions are to be restricted to those changes in employment solely due to and resulting from such merger. Fluctuations, rises and falls, and changes in volume or character of employment brought about solely by other causes are not covered by or intended to be covered by this order.

Section 2(a). The term "merger" as used herein means joint action by the two carriers whereby they unify, consolidate, merge, or pool in whole or in part their separate airline facilities or any of the operations or services previously performed by them through such separate facilities.

(b) The term "carrier" as used herein refers to either United or Capital or to the corporation surviving after consummation of the proposed merger of the two companies.

(c) The term "effective date of merger" as used herein shall mean the effective date of the amended certificates of public convenience and necessity transferred to United pursuant to the approval granted in this order.

(d) The term "employee" as used herein shall mean an employee of the carriers other than a temporary or part-time employee.

Section 3. Insofar as the merger affects the seniority rights of the carriers' employees, provisions shall be made for the integration of seniority lists in a fair and equitable manner, including, where applicable, agreement through collective bargaining between the carriers and the representatives of the employees affected. In the event of failure to agree, the dispute may be submitted by either party for adjustment in accordance with section 13.

Section 4(a). Subject to the applicable conditions set forth herein, no employee of either of the carriers involved in the merger who is continued in service shall as a result of the merger be placed in a worse position with respect to compensation than he occupied immediately prior to the effective date of such merger so long as he is unable in the normal exercise of his seniority rights under existing agreements, rules, and practices to obtain a position producing compensation equal to or exceeding the compensation of the position held by him immediately prior to such date, except however, that if he fails to exercise his seniority rights to secure another available position, which does not require a change in residence, to which he is entitled under the working agreement and which carries a rate of pay and compensation exceeding those of the position which he elects to retain, he shall thereafter be treated for the purposes of this section as occupying the position which he elects to decline.

(b) The protection afforded by the foregoing paragraph is hereby designated as a "displacement allowance" which shall be determined in each instance in the manner hereinafter described. Any employee entitled to such an allowance is hereinafter referred to as a "displaced" employee.

(c) Each displacement allowance shall be a monthly allowance determined by computing the total compensation received by the employee and his total time paid for during the last 12 months in which he performed service immediately preceding the date of his displacement (such 12 months being hereinafter referred to as the "test period") and by dividing separately the total compensation and the total time paid for by 12, thereby producing the average monthly compensation and average monthly time paid for, which shall be the minimum amounts used to guarantee the displaced employee; and if his compensation in his current position is less in any month in which he performs work than the aforesaid average compensation, he shall be paid the difference, less compensation for any time lost on account of voluntary absences to the extent that he is not available for service equivalent to his average monthly time during the test period, but he shall be compensated in addition thereto at the rate of the position filled for any time worked in excess of the average monthly time paid for during the test period.

(d) The protection afforded herein shall only apply to displacements occurring within a period of 3 years from the effective date of the merger (referred to herein as the claim period); and the period during which this protection is to be given (referred to herein as the protective period) shall extend for a period of 4 years from the date on which the employee is displaced.

Section 5(a). Any employee of either of the carriers participating in the merger who is deprived of employment as a result of said merger shall be accorded an allowance (hereinafter termed a dismissal allowance), based on length of service, which (except in the case of an employee with less than 1 year of service) shall be a monthly allowance equivalent in each instance to 60 percent of the average monthly compensation of the employee in question during the last 12 months of his employment in which he earned compensation prior to the date he is first deprived of employment as a result of the merger. This dismissal allowance will be made to each eligible employee, while unemployed, by United during a period beginning at the date he is first deprived of employment as a result of the merger and extending in each instance for a length of time determined and limited by the following schedule:

<u>Length of service</u> Years	<u>Period of Payment</u> Months
1 and less than 2	6
2 and less than 3	12
3 and less than 5	18
5 and less than 10	36
10 and less than 15	48
15 and over	60

In the case of an employee with less than 1 year of service such employee shall not be covered by the benefits provided in this section, but shall receive such benefits, and only such benefits, as are provided by section 7.

(b) For the purposes of this order, the length of service of the employee shall be determined from the date he last acquired an employment status with the employing carrier and he shall be given credit for 1 month's service for each month in which he performed any service (in any capacity whatsoever) and 12 such months shall be credited as 1 year's service. The employment status of an employee shall not be interrupted by furlough in instances where the employee has a right to and does return to service when called. In determining length of service of an employee acting as an officer or other official representative of an employee organization he will be given credit for performing service while so engaged on leave of absence from the service of the carrier: Provided, That in calculating the dismissal allowance for such an employee, such allowance shall be based upon the compensation paid such employee by the carrier during his last 12 months of service on the company payroll and not on the compensation he may have been paid by the employee representative organization.

(c) An employee shall not be regarded as deprived of employment in case of his resignation, death, or on account of age or disability in accordance with the current rules and practices applicable to employees generally, dismissal for justifiable cause in accordance with the rules, or furlough because of reduction in forces due to seasonal requirements of the service; nor shall any employee be regarded as deprived of employment as the result of the merger who is not deprived of his employment within 3 years from the effective date of said merger.

(d) Each employee receiving a dismissal allowance shall keep United informed of his address and the name and address of any other person by whom he may be regularly employed.

(e) The dismissal allowance shall be paid to the regularly assigned incumbent of the position abolished. If the position of an employee is abolished while he is absent from service, he will be entitled to the dismissal allowance when he is available for service. The employee temporarily filling said position at the time it was abolished will be given a dismissal allowance on the basis of said position until the regular employee is available for service and thereafter shall revert to his previous status and will be given a dismissal allowance accordingly if any is due.

(f) An employee receiving a dismissal allowance shall be subject to call to return to service after being notified in accordance with the working agreement, and such employee may be required to return to the service of the employing carrier for other reasonably comparable employment for which he is physically and mentally qualified and which does not require a change in his place of residence, if his return does not infringe upon the employment rights of other employees under the working agreement.

(g) If an employee who is receiving a dismissal allowance returns to service the dismissal allowance shall cease while he is so reemployed and the period of time during which he is so reemployed shall be deducted from the total period for which he is entitled to receive a dismissal allowance. During the time of such reemployment, however, he shall be entitled to protection in accordance with the provisions of section 4.

(h) If an employee who is receiving a dismissal allowance obtains other employment, his dismissal allowance shall be reduced to the extent that the sum total of his earnings in such employment plus his allowance and any unemployment insurance benefit (or similar benefit) exceed the amount upon which his

dismissal allowance is based: Provided, That this shall not apply to employees with less than 1 year's service.

(i) A dismissal allowance shall cease prior to the expiration of its prescribed period in the event of---

1. Failure without good cause to return to service after being notified of position for which he is eligible and as provided in paragraphs (f) and (g).

2. Resignation.

3. Death.

4. Retirement or on account of age or disability in accordance with the current rules and practices applicable to employees generally.

5. Dismissal for justifiable cause.

Section 6. An employee affected by the merger shall not during the applicable protective period be deprived of benefits attaching to his previous employment, such as hospitalization, relief, and the like.

Section 7. Any employee eligible to receive a dismissal allowance under section 5 hereof may, at his option at the time of merger, resign and (in lieu of all other benefits and protections provided in this order) accept in a lump sum a separation allowance determined in accordance with the following schedule:

<u>Length of service</u>	<u>Separation allowance</u>
<u>Years</u>	<u>Months' pay</u>
1 and less than 2	3
2 and less than 3	6
3 and less than 5	9
5 and over.	12

In the case of employees with less than 1 year's service, 5 days' pay, at the straight time rate per working day of the position last occupied, for each full month in which they performed service will be paid as the lump sum.

(a) Length of service shall be computed as provided in section 5.

(b) One month's pay shall be computed by multiplying by 30 the calendar daily rate of pay received by the employee in the position last occupied prior to time of the merger.

Section 8(a). Any employee who is retained in the service of the carrier surviving the merger (or who is later restored to service from the group of employees entitled to receive a dismissal allowance) who is required to change the point of his employment as result of such merger, and is therefore required to move his place of residence, shall be reimbursed for all expenses of moving his household and other personal effects and for the traveling expenses of himself and members of his family, including living expenses for himself and his family and his own actual wage loss during the time necessary for such transfer, and for a reasonable time thereafter (not to exceed 2 working days), used in

securing a place of residence in his new location. The exact extent of the responsibility of the carrier under this provision and the ways and means of transportation shall be agreed upon in advance between the carrier and the affected employee or his representative. No claims for expenses under this section shall be allowed unless they are incurred within 3 years from the effective date of the merger, and the claim must be submitted within 90 days after the expenses are incurred.

(b) Changes in place of residence subsequent to the initial change caused by the merger and which grow out of the normal exercise of seniority in accordance with working agreements are not comprehended within the provisions of this section.

Section 9(a). The following provisions shall apply, to the extent they are applicable in each instance, to any employee who is retained in the service of the carriers involved in this merger (or who is later restored to such service from the group of employees entitled to receive a dismissal allowance) who is required to change the point of his employment as a result of such merger and is therefore required to move his place of residence.

1. If the employee owns his own home in the locality from which he is required to move, he shall at his option be reimbursed by the carrier for any loss suffered in the sale of his home for less than its fair value. In each case the fair value of the home in question shall be determined as of a date sufficiently prior to the merger to be unaffected thereby: Provided, however, That if the home is not sold within a substantial period of time after the merger, then the fair value of the home shall be determined as of a date as closely related to the date of sale as possible, with an agreed-upon adjustment being made to exclude any effect of the merger on such fair value. The carrier shall in each instance be afforded an opportunity to purchase the home at such fair value before it is sold by the employee to any other party.

2. If the employee is under a contract to purchase his home, the carrier shall protect him against loss to the extent of the fair value of any equity he may have in the home and in addition shall relieve him from any further obligations under his contract.

3. If the employee holds an unexpired lease of a dwelling occupied by him as his home, the carrier shall protect him from all loss and cost in securing the cancellation of his said lease.

(b) Changes in place of residence subsequent to the initial change caused by the merger and which grow out of the normal exercise of seniority in accordance with working agreements are not comprehended with the provisions of this section.

(c) No claim for loss shall be paid under the provisions of this section which is not presented within 3 years after the effective date of the merger.

(d) Should a controversy arise in respect to the value of the home, the loss sustained in its sale, the loss under contract for purchase, loss and cost in securing termination of lease, or any other question in connection with these matters, it shall be decided through joint conference between the employee or

his representative and the carrier, and, in the event they are unable to agree, the dispute may be referred by either party to a board of three competent real estate appraisers, selected in the following manner: One to be selected by the employee or his representative and one by the carrier, respectively; these two shall endeavor by agreement within 10 days after their appointment to select the third appraiser, or to select some person authorized to name the third appraiser; and in the event of failure to agree, then the Chairman of the National Mediation Board shall be requested to appoint the third appraiser. A decision of a majority of the appraisers shall be required and said decision shall be final and conclusive. The salary and expenses of the third or neutral appraiser, including the expenses of the appraisal board, shall be borne equally by the parties to the proceedings. All other expenses shall be paid by the party incurring them, including the salary of the appraiser selected by such party.

Section 10. If either carrier, on or after July 19, 1960, shall rearrange or adjust its forces in anticipation of the merger, with the purpose or effect of depriving an employee of benefits to which he should be entitled under this order as an employee immediately affected by the merger, the provisions of this order shall apply to such an employee as of the date when he is so affected.

Section 11. United and Capital shall jointly or severally give at least 45 days' written notice containing a full and adequate statement of the proposed changes to be effected by the merger, including an estimate of the number of employees of each class, craft or field of endeavor affected by the intended changes. Such notice shall be posted on bulletin boards or other conspicuous places convenient to the employees of said carriers, and a copy of the notice shall be sent by registered mail to all authorized representatives of any of the employees of both carriers.

If requested in writing by any employee or employees of either carrier or the authorized representative of such employee or employees, the date and place of a meeting between said employees or their representatives and the representatives of the carriers to settle problems of the rearrangement of such employees arising out of and because of the merger shall be agreed upon with 10 days after such request is received by the carrier. The meeting shall commence within 30 days from the date the request is received by the carrier.

In the event of a failure to agree upon a settlement of a problem or of problems presented at the meeting, the unsettled problems may be submitted by either party for adjustment in accordance with section 13.

Section 12. No employee of either carrier shall, as a condition of eligibility for the protection afforded by the terms of this order be required to accept employment with the surviving carrier that is not within the class, craft, or field of endeavor in which he was employed by either carrier on the date of this order.

Section 13. In the event that any dispute or controversy (except as to matters arising under sec. 9) arises with respect to the protection provided herein, which cannot be settled by the carrier and the employee, or his authorized representative, within 30 days after the controversy arises, it may be referred, by either party, to an arbitration committee for consideration and determination, the formation of which committee, its duties, procedure, expenses, etc., shall be agreed upon by the carriers and the employees, or the duly authorized representatives of the employees.

APPENDIX I

Estimated diversionary effect of United-Capital merger upon selected domestic trunkline carriers in major markets in which United would be a replacement or first single or first competitive carrier at 1959 traffic level and for year ended June 30, 1962 ^{1/}

Carrier	1959 commercial revenue ^{2/}				Diversion at 1959 traffic level ^{3/}			
	United to replace Capital		First single or competitive service	Total	United to replace Capital		First single or competitive service	Total
	Route 51	Other markets			Route 51	Other markets		
Continental	\$10,283,550		3453,805	3453,805			3353,422	\$333,422
Delta	38,619,253		815	10,286,365	31,679,976		632	1,680,628
Eastern			544,202	76,734	33,740,284	5,974,434	341	9,035,802
Northwest ^{4/}	24,373	19,783,828	1,419,941	21,233,642	18,099	2,036,368	1,135,933	3,185,300

Carrier	Growth to year ended June 30, 1962 ^{5/}				Net diversion year ended June 30, 1962 ^{6/}			
	United to replace Capital		First single or competitive service	Total	United to replace Capital		First single or competitive service	Total
	Route 51	Other markets			Route 51	Other markets		
Continental			316,167	316,167			337,255	\$337,255
Delta	3825,805		20	323,825	3854,171		632	834,803
Eastern	3,228,124	361	1,903	3,231,038	5,745,310	(820)	59,484	5,804,774
Northwest ^{4/}	1,389	346,804	35,215	353,408	11,680	1,189,564	1,100,735	2,301,982

Explanatory notes

1/ See appendix II for markets analyzed and participation factors used.
 2/ Total single-carrier plus connecting traffic carried in 1959. O&D Survey for 1959, annualized by applying a factor of 10, expanded to include connecting traffic and converted to commercial revenue in accordance with note 3.
 3/ In those markets in which United would replace Capital the appropriate participation factor (from Appendix II) was applied to total 1959 single-carrier traffic to determine the competitive share of traffic Capital would have carried had Capital been an effective competitor. The difference between this total and the traffic actually carried by Capital in 1959 represents the traffic diversion. The balance of the single-carrier traffic after diversion was redistributed among the other carriers on the basis of their participation in the 1959 single-carrier traffic less Capital's actual traffic. For those markets in which Capital actually carried its competitive share no diversion was computed.

For those markets which would receive first single-carrier or first competitive service the total O&D traffic for 1959--as identified in the 1959 O&D survey--was computed on the basis of the actual routing by a carrier, and the appropriate participation factor (from appendix II) was applied to this figure.

O&D passengers were converted to passenger-miles on the basis of airport-to-airport mileage as reported in the Book of Official CAB Airline Route Maps and Airport-to-Airport Mileages, or the mileage reported in the September 1958 O&D Survey.

O&D passenger-miles--except for markets to receive first single-carrier or first competitive service--were expanded to include connecting traffic on the basis of the ratio of connecting to local passengers by market as reported in the September 1958 Competition Among Domestic Air Carriers Survey.

Total commercial revenue was computed by applying the carrier's 1960 domestic system yield for passenger and excess baggage plus its 1960 ratio of express and freight revenue to the total passenger revenue.

4/ Revenue yields for year ended Sept. 30, 1960.

5/ Growth to June 30, 1962, computed at 12.4 percent for the 2 1/2-year period based on domestic trunkline growth for the 30-month period from June 30, 1958, to Dec. 31, 1960, for passenger originations.

6/ 1959 diversion less growth to year ended June 30, 1962. To the extent that growth more than offset the 1959 diversion in any market it has been credited against the total diversion estimate.

AGREEMENT
between
LAKE CENTRAL AIRLINES, INC.
and the
FLEET AND PASSENGER SERVICE EMPLOYEES
in the service of
LAKE CENTRAL AIRLINES, INC.
as represented by the
AIR LINE EMPLOYEES ASSOCIATION, INTERNATIONAL

*It is hereby mutually agreed:

SECTION 1 - RECOGNITION

In accordance with the National Mediation Board Certification, Number R-3836, dated May 27, 1966, the Company hereby recognizes the Air Line Employees Association, International, as the duly designated and authorized representative of the Fleet and Passenger Service Employees in the service of Lake Central Airlines, Inc.

SECTION 2 - DEFINITIONS

- (a) "Employee" as used in this agreement means the following Fleet and Passenger Service Employees who are classified as: Station Agent, Forms Agent, Cargo Agent, Baggage Agent, Ramp Service Agent, Reservations Agent, Ticket Agent, Relief Agent, and Chief or Lead Agent positions associated with the foregoing classifications, plus Assistant Station Managers.
- (b) "Month" as used in this agreement means the period from the first day of, to, and including the last day of each calendar month of the year, except that January, February and March shall be considered thirty (30) day months for the purpose of scheduling.
- (c) It is understood and agreed that any masculine pronoun or noun used in this agreement shall be deemed and understood to designate any employee referred to in the agreement, whether male or female.
- (d) Part-Time Employee: A part-time employee shall be covered under this agreement and will be an employee who will be assigned no more than an average of twenty (20) hours per week and not more than a total of eighty-six (86) hours per month, and who shall accrue seniority, vacation, and sick leave on a pro rata basis in proportion to hours worked.

SECTION 3 - JOB DESCRIPTIONS

1. Stations

- (a) Assistant Station Manager: The employee in any station designated by the Vice President Traffic and Sales who, in the absence of the Resident Manager, is responsible for the duties of the position of "Resident Manager," and such other duties as may be assigned, including shift work.

- (b) Lead Agent: The employee (in any station designated by the Vice President Traffic and Sales) who is selected for this position due to personal qualifications fitting him to perform the duties and to supervise and train all classes of agents or a specific class of agent, and to act in behalf of the Resident Manager and/or Assistant Station Manager, and in the absence of both the Resident Manager and Assistant Station Manager, assume full charge and responsibility for the proper operation of all offices and conduct of personnel under his Resident Manager's jurisdiction.

(c) Station Agent: The employee who has qualified himself in all of the non-managerial duties necessary to the operation of the station to which he is currently assigned, including but not limited to ramp duties, weight and balance, reservations, weather observing (where required), ticketing and passenger service.

(d) Baggage Agent: The employee at a location designated by the Vice President Traffic and Sales, whose primary duties include but are not limited to the loading and unloading of aircraft, the pick up and delivery of on-line and inter-line bags, and when directed, the similar handling of cargo.

(e) Cargo Agent: The employee at a location designated by the Vice President Traffic and Sales, whose primary duties include, but are not limited to, the receipt and delivery of air cargo at a cargo facility and the handling of cargo forms, manifesting and billing, and who may also be required to load and unload aircraft.

(f) Ramp Service Agent: The employee at a location designated by the Vice President Traffic and Sales, whose primary duties are to provide aircraft ramp fueling and servicing as directed; drive and service refueler tenders, tugs, energizers, cargo loaders, water carts, ADI fluid and water; perform aircraft cleaning and sanitary servicing as directed; perform other routine ramp duties as directed including, but not limited to, handling of cargo and baggage; perform assigned record-keeping duties; perform other duties assigned by, and be directly responsible to, the Local Resident Manager, Assistant Resident Manager, Lead Agent or senior agent on duty.

(g) Forms Agent: The employee at a location designated by the Vice President Traffic and Sales, whose primary duties include but are not limited to the completion of weight and balance forms, load manifests, and other associated forms, the operation of teletype and the handling of air-route traffic control information.

(h) Relief Agent: An employee employed at, or operating out of, a station or office, who has the qualifications for and whose full time duty is the providing of relief coverage for vacations, sickness or other causes, in jobs within either or both Station and Reservations classifications.

(i) Ticket Agent: The employee whose primary duties are to issue tickets to passengers; collect, refund, or adjust passenger fares, check baggage, prepare passenger manifests, provide information, render such passenger service as required in operating a ticket office; and maintain such records as may be directed by the Company in connection with such duties in either field or city ticket offices and perform such other duties as may be assigned. Directly responsible to the local Resident Manager, Assistant Resident Manager, Lead Agent, or senior agent on duty.

(j) Chief Ticket Agent: The employee, in any office designated by the Vice President Traffic and Sales, who is selected for this position due to the personal qualifications fitting him or her to be in charge of and responsible for the proper operations of that office, perform the duties of and to supervise and train Ticket Agents assigned to that office.

2. Reservations:

(a) Chief Reservations Agent: The employee, in any reservations office designated by the Vice President Traffic and Sales, who is selected for this position due to the personal qualifications fitting him or her to be in charge of and responsible for the proper operation of that office and perform the duties of and to supervise and train Reservations Agents assigned to that office.

(b) Reservations Agent: The employee whose primary duties are to secure, alter or cancel reservations over the route of the Company or any other air carrier; to provide information relative to routings, schedules and fares; to render such information or service to passengers as may be required; and to maintain such records as may be directed by the Company in either field or city reservations offices and perform such other duties as may be assigned. Directly responsible to local Resident Manager, Assistant Resident Manager, Lead Agent, senior agent on duty, or Reservation Manager and Chief Reservations Agent.

SECTION 4 - STATUS OF AGREEMENT

(a) Subject to conditions specified in this agreement, the Association recognizes the right and responsibility of the Company to direct its own affairs, to direct and supervise all employees, to reduce or increase forces and determine the necessary number of employees by classification, to discipline and discharge employees for cause, to transfer and promote and demote employees for cause.

(b) Employees who are off duty shall be free of all duty and without restriction to their activities, except that employees will be expected to maintain accepted general standards of conduct and will be reasonably accessible to contact.

(c) It is understood that the Company will not lock out any employee covered by this Agreement, and neither the Association nor any employees will authorize or take part in any work stoppage, slowdown, strike, or picketing of Company premises until the procedures for settling disputes as provided hereunder and as provided by the Railway Labor Act, have been exhausted.

SECTION 5 - HOURS OF SERVICE

(a) The work day shall be a twenty-four (24) hour period beginning at midnight. All time worked in any continuous tour of duty, including overtime, will be considered as work performed on the day in which the tour of duty started.

1. Eight (8) consecutive hours, exclusive of a meal period, shall constitute a day's work.

(b) The work week will consist of a seven (7) consecutive day period commencing with the first work day after the last regular day off.

1. Five (5) consecutive days of work will constitute a week's work.

2. Each employee shall be given two (2) consecutive days off in each of his work weeks, except where shifts are rotated periodically, in which event the total number of days off for any such employee shall not be less than fourteen (14) days in any period of seven (7) consecutive weeks.

(c) The assignment of shifts at each station will be made on a rotating shift basis unless a majority of the employees in a classification at a station request fixed shifts. The selection of fixed or rotating shifts will be effective for a minimum of three (3) months.

1. A fixed shift shall be a shift which starts at the same time each day during the period of one month. Assignment of such shifts shall be made in accordance with seniority preference, provided the bidder has adequate qualifications.

2. A rotating shift shall be a shift of one month or more duration which rotates through the prevailing shifts. The method in which shift rotation will be

determined by the company in accordance with the needs of the service. When a newly assigned employee attains adequate qualifications he shall be included in such rotation.

(d) Trading of shift assignments or days off will be permitted if requested in writing, subject to the approval of the Company.

(e) Station work schedules including position worked shall be posted by the Company for bid ten (10) days prior to the first day of the month or ten (10) days prior to a schedule change and the bid results will be posted seven (7) days before the effective date. Once work schedules are posted, the schedule, including position worked, shall not be changed except in the event of actual emergency.

(f) Employees shall be scheduled a minimum rest period of eight(8) hours between scheduled shifts, except where a shorter period results from shift trades or the periodic rotation of shifts.

(g) An employee called in to duty not continuous with his regular work shift shall be paid for such at time and one-half for a minimum of three (3) hours at the overtime rate of pay.

(h) Time and one-half shall be paid for all work in excess of eight (8) hours in any one work day. Double time shall be paid for all work in excess of twelve (12) hours in any work day.

(i) When an employee works on his regular day off or days off, he shall be paid at time and one-half for the first twelve (12) hours worked and double time for all additional hours worked on his first regular day off and double time for all work performed on his second regular day off provided that in the case of both the first and second regular day off, he has worked each day since his last regular day off.

(j) Time not worked for the reasons listed below shall be considered as hours worked for the purpose of computing overtime:

1. Sick leave with pay.
2. Summoned by governmental agency on Company business.
3. Paid holidays.
4. Paid vacations.

(k) All employees shall be granted a ten (10) minute rest period during the first half of their shift and a ten (10) minute rest period during the second half of their shift free from all duty and without loss of pay.

(l) There shall be one meal period of one-half hour scheduled within one and one-half hours of the mid-point of the employee's shift. Employees who, because of the requirements of the service, are requested to start their meal period outside of the period defined above will be allowed such meal period as close to the regular meal period as possible and paid for same at the straight time rate in addition to their regular straight time compensation. If, at the request of the Company, an employee foregoes a meal period, he shall be paid for the meal period at the rate of one and one-half times his base rate, or with the employee's consent, may be scheduled for an eight (8) hour shift without a meal period. In either event the employee may eat while working. Where the requirements of shift scheduling or inadequate eating facilities make it necessary, a meal period of one (1) hour may be scheduled. The Company will designate a clean location at each station or work location at which its employees may eat and rest free of all duty. Employees will cooperate in maintaining the cleanliness of such locations.

Where the requirements of shift scheduling or inadequate or crowded eating facilities make it necessary, a meal period of one (1) hour will be scheduled for central reservations personnel.

- (m) For continuous service of more than two (2) hours before or after a regular day's work, employees will not be required to work more than two (2) hours without being permitted to go to meals, and employees will be allowed thirty (30) minutes to eat at the overtime rate applicable at the time worked.
- (n) Overtime will be distributed as equally as possible amongst employees regularly assigned to the position requiring the overtime. Overtime will be proffered in the order of seniority to such employees, and if refused they will be charged with the time for the purpose of equalization. If refused by all such employees it may be assigned in inverse order of seniority amongst such employees.
- (o) There shall be no split shifts for employees covered by this agreement.
- (p) Overtime shall be computed to the nearest half hour.
- (q) Employees who serve as jurors shall receive their regular straight time rate and the fee received for jury duty shall be endorsed over to the Company.
- (r) At stations employing two or less employees, the hours of work may be modified in which event such employees will be scheduled a minimum of forty (40) hours work each week and the provisions of Subsections (a), (b), (h), (i) and (t) herein shall not apply. Instead, all time in excess of forty (40) hours a week or twelve (12) hours a day shall be at the rate of time and one-half. All time in excess of sixty (60) hours per week shall be at the rate of double time.
- (s) The Company will not employ part-time employees unless the time to be covered is first proffered to the available employees regularly assigned to the position at the applicable rates and the hours are refused by such employees. Part-time employees shall not be used so as to displace regular full time employees who would normally be required. Any hours assigned to part-time employees in excess of eighty-six (86) per month shall be paid at double time rates.
- (t) Non-contractual employees shall not perform the work of employees covered by this agreement, except:
 - 1. Managers at the AA Stations of Chicago, Cincinnati, Columbus, Detroit, Indianapolis, and Pittsburgh will not perform any of the work of such employees.
 - 2. Managers at all other AA and A Stations may perform such work up to a maximum of one hundred thirty-eight (138) hours a month.
 - 3. Managers at B and C Stations may perform such work up to a maximum of one hundred seventy-three (173) hours per month.
 - 4. (a) The limitations set forth herein shall not be exceeded unless the excess hours have been first proffered to the employees in accordance with paragraph (n) herein and refused by them.
(b) In the event a manager exceeds the limitations provided herein without following (a) above, the time shall be paid to the senior employee at the double time rate and such shall be counted in the equalization of overtime for such employee.

SECTION 6 - HOLIDAYS

- (a) The following holidays are designated as paid holidays: New Year's Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, and the Employee's Birthday.
- (b) An employee who does not work on a holiday shall be paid holiday pay; i.e., his regular pay for that day except as provided herein.
- (c) An employee who does work on a holiday shall be paid holiday pay plus time and one-half for all hours worked.
- (d) An employee who is scheduled to work but is absent on a holiday due to illness or injury will receive holiday pay but will receive sick leave pay only to the extent of his sick pay accrual. The Company may require verification of sickness or injury.
- (e) Any employee who fails to work on his last assigned work day preceding a holiday or who fails to work on the first assigned work day subsequent to a holiday or who does not report for duty if scheduled or directed to work on a holiday, shall not receive holiday pay as provided in this Section unless the absence is for reasons of sickness, injury, or other cause beyond the control of the employee. The Company may require verification of sickness, injury, or other cause.
- (f) An employee whose regular day off falls on a holiday will be paid holiday pay for such day.

SECTION 7 - VACATIONS

- (a) All employees will be eligible for annual paid vacations, except as otherwise provided herein.

- (b) Vacation Allotment Schedules

- (1) A schedule of vacation periods for the following calendar year will be posted on or before October 1 of each year, and Supervisors will plan vacation schedules so that adequate departmental staffing may be maintained at all times.

- (2) Subject to the Company's operating requirements, the period in which employees shall be permitted to take their vacations shall be within vacation periods specified by the Company and shall be assigned in accordance with their preference and in the order of seniority.

- (3) Each employee after completing one (1) year of service with the Company shall become eligible for and receive a vacation with pay in accordance with his total length of paid service on the following basis:

After the first and second year of service	10 working days
After the third and fourth year of service	11 working days
After the fifth and sixth year of service	12 working days
After the seventh and eighth year of service	13 working days
After the ninth and tenth year of service	14 working days
After the eleventh year, up to and including the nineteenth year of service	15 working days
After the twentieth year of service	20 working days

- (4) Vacations shall not be cumulative from year to year but shall be taken within the twelve (12) month period after they become due.

(5) Paid vacation allowance will be computed at the employee's current salary and any applicable shift premium.

(6) Paid vacation allowance will be computed on scheduled work days, not including paid holidays.

(7) If a paid holiday occurs during the employee's vacation period, his vacation allowance shall be extended by one (1) day, or he shall be paid at straight time for such holiday.

(8) A terminating employee who:

- (1) resigns with two weeks' notice;
- or (2) is granted a leave of absence;
- or (3) is furloughed due to reduction in force;

shall, if he has been employed for at least one year, receive full compensation for all unused vacation, on a pro rata basis, computed to the nearest month.

(9) A terminating employee under conditions (8) 2 or 3 shall, if he has been employed for less than one year at the time of termination, retain vacation credit earned during his period of employment, and such credit shall resume accrual in the event of, and upon the date of, rehiring.

(10) An employee who fails to give two (2) weeks' notice of resignation in writing or who is discharged for cause shall receive no vacation compensation.

(11) Any employee who enters military service by enlistment or by call to duty under the provisions of the Selective Service Act shall receive vacation pay for any vacation accrued but not taken to date of leaving the Company, provided the employee has been employed for at least one year.

(12) An employee returning from military leave of absence shall accrue vacation credit on a pro rata basis for each month in the employ of the Company since but not including, such military leave of absence. In such cases, the employee's due date for vacation shall be the anniversary of original employment, but he shall be allowed credit only for those months after return from military service.

(13) Any days lost for which pay was received (due to personal illness, death or serious illness in the immediate family, or other excused absence) shall not be deducted in computing vacation allowance. However, time spent on leave of absence during a year shall not count in computing vacation allowance.

SECTION 8 - EXPENSES

(a) When employees are away from their base station on Company business, the Company shall defray the employees' reasonable actual expenses covering meals, lodging, tips, laundry, and transportation. To receive such reimbursement, the employee shall submit an expense report in a form required by the Company. Travel by auto shall only be used when authorized by the Company. Auto travel must be substantiated by mileage figures and shall be compensated for on the basis of eight cents (8¢) per mile.

(b) When an employee is required by the Company to perform temporary work at more than one station or point during the same working day, he shall receive straight time for all hours worked or traveled during his regularly assigned hours. Employees shall receive the applicable overtime rate for all hours actually worked beyond

eight (8) hours and straight time rates for all travel time.

(c) When the entire day is involved in Company-required travel only, employees shall receive straight time rates for travel time not to exceed eight (8) hours in any twenty-four (24) hour period.

(d) When a flight is diverted to an alternate field, travel time of an employee required to go from his station to such alternate field and return therefrom, shall be considered as hours worked, and such employee shall receive reasonable actual expenses.

(e) Relief agents shall be paid expenses in accordance with Paragraph (a) while away from their home stations.

(f) Employees required by the Company to use their personal vehicle for Company business shall receive eight cents (8¢) per mile for each mile traveled while on such Company business.

SECTION 9 - MOVING EXPENSES

(a) An employee hereunder, when permanently transferred at Company request from one station to another will be allowed actual moving expenses for household effects up to a maximum of 2,700 pounds gross weight for a single employee, 5,500 pounds for an employee with one dependent, plus 500 pounds for each additional dependent. A transfer of longer than thirty (30) days shall be considered a permanent transfer. When such procedure is approved by the Company, expenses for moving by automobile shall be allowed at a rate of eight cents (8¢) per mile for the shortest AAA mileage between the stations. A per diem expense of \$10.00 per day will be allowed for actual travel and relocation time, not to exceed a total of seven (7) days. When traveling, the employee will take only the minimum reasonable period necessary to proceed to the new location. An employee hereunder who is transferred as a result of his station closing shall be considered as having transferred at Company request.

(b) When an employee is entitled to expenses for moving household effects, he shall where possible, obtain three (3) bids and shall submit the bids to the Purchasing Department as soon as possible prior to his move. Thereafter, the Purchasing Department will notify the employee which bid should be selected.

(c) An employee hereunder transferred from one station to another at his own request will bear his own expenses, except that space available transportation on the Company's system shall be furnished to such employee and his family to the extent permitted by law.

(d) Successful bidders to promotional vacancies or newly established stations will be considered as being transferred at Company request and the appropriate provisions of paragraphs (a) and (b) of this Section shall apply.

SECTION 10 - UNIFORMS

(a) Employees may be required to wear uniforms as prescribed in Company regulations at all times while on duty.

(b) The Company will furnish on a loan basis Company insignia required to be worn by the employees at no cost to the employees and returned to the Company upon termination.

(c) Employees required to wear uniforms will be paid six dollars (\$6.00) per month cleaning allowance.

(d) The Company will furnish rain gear at no cost to the employees, in sufficient number to protect the average number of employees at a station who are required by their duties to face inclement weather.

(e) The recommendations of the Association will be considered by the Company before making any change in the style, color, or material of the uniforms. In the event agreement cannot be reached, the Company shall make the final decision.

(f) The Company will furnish protective clothing at no cost to the employees who are required to report to work in their dress uniforms and who are thereafter required to do work which will tend to soil or damage the dress uniform in sufficient number to protect the average number of employees at a station.

SECTION 11 - SENIORITY, GENERAL

(a) An employee's system seniority shall be based upon total length of paid service with the Company. In the event two or more employees have the same seniority date, they will be ranked by age, the oldest appearing first.

(b) Classification seniority shall be based upon total length of service in the classification as set forth in Section 12. In the event more than one employee has the same classification seniority, the employee having the greatest system seniority will appear first on the classification seniority list.

(c) Classification seniority shall govern the retention of employees in case of a reduction of force, promotion to positions covered by this agreement, demotions, choice of vacancy, filling of vacancies, new positions and re-employment after a reduction in force, provided that the employee's qualifications are sufficient for the conduct of the work to which he is to be assigned.

(d) Any employee accepting transfer to a supervisory, administrative, or sales position in the Company not covered under this agreement shall retain but not continue to accrue seniority in the seniority classification from which transferred. Any employee accepting transfer to any other seniority classification under this agreement shall retain but not continue to accrue seniority in the seniority classification from which transferred.

SECTION 12 - SENIORITY CLASSIFICATIONS

(a) Seniority classifications are established as follows:

1. Station Classification, including Assistant Station Managers, Chief Ticket Agent, Ticket Agent, Lead Agent, Station Agent, Ramp Service Agent, Forms Agent, Baggage Agent, Cargo Agent and Relief Agent.

2. Reservations Classification, including Chief Reservation Agent and Reservation Agent.

SECTION 13 - LOSS OF SENIORITY

An employee shall lose his seniority status and his name shall be removed from the seniority list under the following conditions:

- (a) He quits or resigns.
- (b) He is discharged for cause.
- (c) He does not comply with Section 19, Paragraph (b) or Paragraph (c).

SECTION 14 - SENIORITY LISTS AND PROTESTS

- (a) Within fifteen (15) days after April 1 and October 1 of each year, the Company shall bring up to date and post revised "System Seniority Lists," which shall contain, in their proper order, names of all employees then entitled to seniority, their station, position, classification, and system and classification seniority dates.
- (b) Employees shall have sixty (60) days after the posting of such lists in which to protest in writing to the Company any omission or incorrect posting affecting their seniority in any such revised list, but such protest shall be strictly confined to errors or changes occurring subsequent to the posting of the prior System Seniority Lists.

SECTION 15 - PROBATION

- (a) During the first ninety (90) days from the date of placement on the Company's payroll, an employee shall be on probation. The probation period may, at the election of management, be extended for an additional period of three (3) months to a maximum period of six (6) months, provided written notice is given to the employee prior to the expiration of his first three (3) months of employment.

1. A person engaged in a pure training program, i.e., not including on-the-job training, and prior to his first assignment, shall not be considered as on the Company payroll for the purpose of this agreement.

SECTION 16 - LEAVES OF ABSENCE

- (a) Any employee hereunder may upon proper application and approval of the Company be granted a leave of absence for the purpose set forth in the application; for a period not in excess of ninety (90) days. Such leaves may be extended for additional ninety (90) day periods when approved by the Company. When such leaves are granted, the employee shall retain and continue to accrue seniority only for the first ninety (90) days of such leave.

1. An employee returning from an authorized leave or extension thereof, as provided herein, shall be permitted to resume his position in the same position and classification at the base to which he was stationed prior to the beginning of his leave or in the same position and classification in the district to which he was assigned.

2. In the event the returning employee is not deemed to be qualified, he shall be given a reasonable qualifying period. If the job no longer exists, he may exercise his seniority to displace the most junior man on the system in his classification.

3. All applications and approvals of leaves of absence shall be in writing.

4. During the time any employee is on leave of absence he shall not be gainfully employed without first having received the approval of the Company.

5. Subject to the provisions of this Section, pregnancy leaves will be granted to employees with two (2) or more years of service. The Company may require the employee to go on pregnancy leave at any time after the fourth month of pregnancy.

- (b) When leaves are granted on account of sickness or injury, an employee shall retain his accrued seniority and continue to accrue seniority for one (1) year, except for pay purposes.
- (c) In the event of a national emergency, employees ordered to extended active military duty shall retain and continue to accrue seniority, to the extent provided by applicable law.
- (d) Time spent on leave of absence shall not count for sick leave or vacation.
- (e) Any dispute arising hereunder concerning the physical fitness of the employee concerned shall be settled in accordance with Section 22.
- (f) An employee will be granted a three (3) day leave of absence with pay for days of work missed for death in the immediate family. The immediate family will consist of wife or husband, children, mother and father, brothers and sisters, mother-in-law and father-in-law. Such days of pay for work days missed shall be deducted from sick leave accrual, if any. If there is no sick leave accrual there will be no pay for work days missed.

SECTION 17 - SICK LEAVE

- (a) All employees who have completed ninety (90) days of continuous service shall be credited with one (1) day of sick leave credit for each month retroactive to the date of employment. Total cumulative sick leave credit shall not exceed ninety (90) days.
- (b) Sick leave pay will be computed at the employee's regular rate of pay. Sick leave will not be earned for any period of time the employee is absent without pay.
- (c) The provisions for sick leave outlined above are applicable to cases of occupational injury deemed to be compensable under Workmen's Compensation Insurance coverage. Workmen's compensation payments to employees in cases of compensable occupational injury are subject to the laws of the respective states in which the Company operates.
- (d) An employee absent due to injury or illness which is compensable by Workmen's Compensation Insurance shall be eligible for his accumulated sick leave credit, but shall pay over to the Company any Workmen's Compensation which he receives. Sick leave compensation will be charged against the employee's accumulated sick leave.
- (e) The Company reserves the right to require confirmation of illness or injury at any time an employee hereunder claims sick leave pay.
- (f) Sick leave benefits shall not apply to any willful self-inflicted injury or in respect to absence due to intoxication.
- (g) Sick leave shall not apply toward annual vacation.
- (h) An employee shall not be compensated in any manner for sick leave not used.

SECTION 18 - FILLING OF VACANCIES

- (a) All vacancies of ninety (90) days or more known duration will be filled in accordance with this Section and Section 11 above. Temporary vacancies of less than ninety (90) days duration will be filled by Relief Agent assignment provided the employee agrees to such assignment, or by the assignment of the most junior qualified employee whom the Company deems available.
- (b) Vacancies in Ticket Agent, Station Agent, Ramp Service Agent, Forms Agent, Baggage Agent, Cargo Agent, Relief Agent and Reservations Agent positions will be filled from permanent bids filed in the Personnel Office of the Company. When a vacancy occurs in one of the above positions the senior qualified employee who has a bid on file for the position will be selected to fill the vacancy. A permanent bid may be withdrawn in writing at any time prior to the time a vacancy occurs. Permanent bids and withdrawals of bids will be made on Company forms provided for that purpose.
- (c) Vacancies in positions covered by this agreement other than those listed in (b) above, will be bulletined at all company stations where employees eligible to bid such positions are located. All vacancies to be bulletined shall be bulletined as far in advance as possible. Such bulletin shall state the number of vacancies to be filled, station or location, and the deadline date for bidding. Such deadline date will not be less than five (5) days after the bulletining of the vacancy which will be sent by teletype message. The senior qualified employee who has bid for the position will be selected to fill the vacancy.
- (d) An employee who is the successful bidder on any vacancy will not again bid on a vacancy, except in a higher classification, for six (6) months after assuming the bid position.
- (e) If no qualified employee bids a vacancy, or if no qualified employee is willing to accept such vacancy, the Company may assign the most junior qualified employee or hire a new employee to fill the vacancy.
- (f) (1) The successful bidder to a promotional bid will have three (3) months in which to demonstrate his ability to hold the job, except that if his performance is completely unacceptable he may be removed from the job earlier.
- (2) An employee reduced as outlined above will revert to his previous or like classification, and may not bid for a period of six (6) months from the time of reduction, for any promotional vacancy.
- (3) Such employee so reduced who is required to move to a different location will be moved at Company expense as provided herein.

SECTION 19 - REDUCTION OF FORCE

- (a) Any reduction of employees who have completed their probationary period, shall be in the reverse order of classification seniority. Such employees shall be re-employed in the order of such seniority at the time of furlough.
- (b) An employee who has been released due to reduction in force shall file his address in writing with the Personnel Department of the Company and shall thereafter promptly advise the Personnel Department in writing of any change in address.
- (c) An employee shall not be entitled to preference in re-employment (1) if he does not comply with the requirements of paragraph (b) of this Section, or (2) if

he does not give notice of his intention to return to the service of the Company within five (5) days of receipt of such notice, or (3) if he does not return on date specified, which date shall not be less than fifteen days after notice to return is sent by certified mail or telegram to the last address filed with the Personnel Department.

(d) An employee furloughed due to reduction in force, shall upon return to duty be allowed for seniority purposes, all time accrued prior to such furlough but shall not continue to accrue seniority during the period of furlough.

(e) All re-employment rights shall expire at the end of two years from the effective date of the furlough.

(f) Employees terminated or laid off shall be given at least ten days notice or pay in lieu of notice, except when notice is prevented by an act of God, strike, or circumstances beyond the control of the Company or termination is for just cause.

(g) When there is a reduction in force at a station or a station is closed, the employee affected shall be permitted, within ten (10) days from notice thereof (in the following order), to:

1. Bid any vacancy existing in his classification, provided he is qualified, or

2. If no vacancy exists then, in inverse order of seniority, the affected employee may displace (bump) the most junior employee on the system in his classification whose work he is qualified to perform, or

3. At the employee's option (or, if he is the most junior employee in the classification) be furloughed. He shall then be returned to duty only by recall or filling of a later vacancy through exercising his seniority by permanent bid placed on file or by bidding on a vacancy posted for bid.

SECTION 20 - DISCIPLINARY GRIEVANCE PROCEDURE

(a) Hearing

1. An employee shall not be disciplined or dismissed from the service of the Company without notification in writing of such action, nor without an investigation and hearing thereon, provided that such employee makes written request for such investigation and hearing within seven (7) days after receiving such notification.

2. An employee may be held out of service by the Company pending such investigation and hearing and appeals therefrom.

3. Such written request for an investigation and hearing shall be addressed to the employee's immediate superior with a copy thereof to the respective District or Regional Manager, Vice President Traffic and Sales, and the Master Executive Council Chairman.

4. Prior to such investigation and hearing, such employee shall be notified in writing by the Company of the precise charge or charges against him. He shall be given the necessary time, not exceeding seven (7) days in which to secure the presence of witnesses and shall have the right to be represented by an employee of the Company of his choice whom he has designated in writing, or by his duly accredited representative or representatives.

5. Such investigation and hearing shall be held by the respective District or Regional Manager or other operating official of the Company, designated by the Company for that purpose, and shall be held within seven (7) days after the receipt of the employee's written request therefor.

6. Within seven (7) days after the close of such investigation and hearing, the Company shall announce its decision in writing and shall furnish the employee and his duly accredited representatives a copy thereof.

(b) Appeal

1. When a copy of such decision has been received by the employee or his duly accredited representative or representatives, and if such employee is dissatisfied with the Company's decision he shall have the right of appeal to the Vice President Traffic and Sales, or his designated alternate of the Company, provided such appeal request is filed by the employee in writing with the Vice President Traffic and Sales, or his designated alternate of the Company, with copies to his immediate supervisor and the Master Executive Council Chairman, within seven (7) days from the date such employee receives a copy of the Company's decision of the initial investigation and hearing provided in paragraph (a) of this Section. Such appeal hearing shall be held within twelve (12) days after the receipt of the employee's written request therefor by the Vice President Traffic and Sales of the Company.

2. Within seven (7) days after the close of such appeal hearing, the Vice President Traffic and Sales, or his designated alternate, shall announce his decision in writing and shall furnish the employee, or his duly accredited representative or representatives, with a copy thereof.

(c) General

1. If any decision made by the Company under the provisions of this Section is not appealed by the employee affected within the time prescribed herein for such appeals, the decision of the Company shall become final and binding.

2. Nothing in this agreement shall extend the right of the use of the grievance procedures to an employee during his probation period.

3. If, as a result of any hearing or appeal therefrom as provided herein, an employee is exonerated he shall, if he has been held out of service, be reinstated without loss of seniority and shall be paid for such time lost in an amount which he would have ordinarily earned had he continued in service during such period.

4. If, as a result of any hearing or appeal therefrom as provided herein, the employee shall be exonerated, the personnel record shall be cleared of the charges.

5. When it is mutually agreed that a stenographic report is to be taken of the investigation and hearing in whole or in part, the cost will be borne by the Company and the Association equally. In the event it is not mutually agreed that a stenographic report of the proceedings shall be taken, any written record available taken of such investigation and hearing shall be furnished to the other party to the dispute upon request provided the other party shall pay one-half of the agreed upon cost of such record.

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6. After the appeal provisions hereinbefore provided have been complied with, further appeal by the employee, if made, shall be to the "Lake Central Airlines, Inc. Fleet and Passenger Service Employees' System Board of Adjustment," as provided for in the "Agreement between Lake Central Airlines, Inc. and the Fleet and Passenger Service Employees in the service of Lake Central Airlines, Inc., as represented by the Air Line Employees Association, International, dated October 22, 1966, covering the establishment and maintenance of a System Board of Adjustment," provided such appeal is made within thirty (30) days from the date of receipt by the employee, or his duly accredited representative, of the decision of the Vice President Traffic and Sales, or his designated alternate.

SECTION 21 - GRIEVANCE PROCEDURE

(a) An employee, or group of employees, who have a grievance concerning any action of the Company affecting them (other than disciplinary action) shall submit such in writing within thirty (30) days from the date of the cause of the grievance or from the date the cause was known or reasonably must have been known by the aggrieved employee, or employees, to exist. Such written grievance shall be submitted to the District or Regional Manager with copies to the Vice President Traffic and Sales, and the MEC Chairman.

1. The Company will hold a hearing of such grievance at the locale of the grieving employee or employees, presided over by a designated District or Regional Manager or other designated Company official within twelve (12) days from the receipt of such grievance.

2. Within seven (7) days of the close of such hearing, the District or Regional Manager or other duly designated Company official shall render a decision in writing and furnish same to the affected employee, his representative, the ALEA Home Office, and the Vice President Traffic and Sales.

(b) Appeals from such decision under this Section shall be in accordance with Section 20, Sub-sections (b) (1) and (2) and (c) (6).

(c) General

1. If any decision is not appealed within the time limits prescribed, the decision rendered shall be final and binding upon the parties hereto.

2. A grieving employee, his employee representative, or designated employee witnesses shall suffer no pay loss while attending his hearing.

SECTION 22 - PHYSICAL EXAMINATIONS

(a) An employee shall not be required to submit to any Company physical examination in excess of two in any twelve-month period without the employee's consent, and without five (5) days' notice, unless there are reasonable grounds to believe that his health or physical condition is impaired. The employee shall be furnished a copy of the Company medical examiner's report.

(b) Any information obtained by or as a result of a Company physical examination shall be strictly confidential between the Company, the Company's doctor, and the employee, and shall not be divulged to any other person without the written permission of the employee.

(c) Any employee hereunder who fails to pass a Company physical examination may at his option, have a review of his case in the following manner:

1. The employee may employ a qualified medical examiner of his own choosing and at his own expense for the purpose of conducting a physical examination the same as made by the medical examiner employed by the Company.

2. A copy of the findings of the medical examiner chosen by the employee shall be furnished to the Company within fifteen (15) days from removal from service, and in the event that such findings verify the findings of the medical examiner employed by the Company, no further review of the case shall be afforded.

3. In the event that the findings of the medical examiner chosen by the employee shall disagree with the findings of the medical examiner employed by the Company, the Company will at the written request of the employee, ask that the two medical examiners agree upon and appoint a third qualified and disinterested medical examiner, preferably a specialist, for the purpose of making a further medical examination of the employee.

4. The said disinterested medical examiner shall then make a further examination of the employee in question and the case shall be settled on the basis of such findings.

5. The expense of the employing of the disinterested medical examiner shall be borne one-half by the employee and one-half by the Company. Copies of such medical examiner's report shall be furnished to the Company and to the employee.

(d) When an employee is removed from service by the Company as a result of his failure to pass the Company's physical examination and appeals such action under the provisions of this Section he shall, if such action is proven to be unwarranted, as provided in paragraph (c) of this Section, be paid retroactively for time lost the amount which he would have ordinarily earned had he been continued in service during such period.

(e) Any physical examination required by the Company shall be paid for by the Company.

SECTION 23 - ORDERS TO EMPLOYEES

All orders to employees involving a change in base assignments, promotions, demotions, furloughs, vacations, leaves of absence, or any other change of status affecting the employee's pay shall be stated in writing.

SECTION 24 - TRAINING

(a) No employee shall be required to pay for the use of any training equipment required by the Company. The cost of any training required of the employees for maintaining or improving the stand of proficiency shall be borne by the Company.

(b) Station meetings shall be held to a minimum but when planned, employees shall be scheduled for required station meetings on the monthly schedule, and when required to attend station meetings held at a time when they are not scheduled to be on duty, they shall be paid at straight time rates with a minimum of two (2) hours pay for any such scheduled meeting. Non-scheduled meetings shall be held to a minimum but when called the attendance shall be required. If a meeting is held when an employee is on duty, he shall receive regular pay; or, if he is held over as a continuance of his shift the employee shall receive straight time pay for the time he is held over. If attendance at the non-scheduled meeting is by recall, the employee shall receive time and one-half pay for a minimum of two (2) hours.

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SECTION 25 - EQUIPMENT

Employees shall not be required to pay for use of equipment or for equipment damaged in the line of duty, except for willful negligence.

SECTION 26 - UNION SECURITY

(a) Any employee who on the effective date of this agreement is a member in good standing of the Association and those employees who thereafter become members of the Association, shall remain a member of the Association in good standing as a condition of continued employment with the Company.

1. For the purpose of this Section, an employee shall be considered a member of the Association in good standing if he tenders the initiation fees and periodic dues uniformly required as a condition of membership.

(b) All new employees of the Company hired on, or after the effective date of this agreement shall become members of the Association sixty (60) days after date of employment with the Company, and shall thereafter maintain membership in the Association as provided for in Paragraph (a) of this Section.

(c) If a member becomes delinquent in the payment of his initiation fee and/or membership dues such member shall be notified by registered mail, return receipt requested, copy to Vice President - Industrial Relations and the Company, that he is delinquent in the payment of initiation fee and/or membership dues as specified herein and is subject to discharge as an employee of the Company. Such letter shall also notify the employee that he must remit the required payment within a period of fifteen (15) days or be discharged.

(d) If upon the expiration of the fifteen (15) day period the employee still remains delinquent the Association shall certify in writing to the Vice President - Industrial Relations of the Company, copy to the employee, that the employee has failed to remit payment within the grace period allowed and is therefore to be discharged. The Vice President - Industrial Relations shall then take proper steps to discharge such employee from the service of the Company.

(e) A grievance by an employee who is to be discharged as the result of this Section shall be subject to the following procedure:

1. An employee who believes that the provisions of this Section pertaining to him have not been properly interpreted or applied may submit his request for review in writing within five (5) days from the date of his notification by the Vice President - Industrial Relations, as provided in Paragraph (d). The request must be submitted to the Vice President - Industrial Relations, or his designee, who will review the grievance and render his decision in writing not later than five (5) days following the receipt of the grievance.

2. The Vice President - Industrial Relations, or his designee, will forward his decision to the employee, with a copy to the Association Master Chairman. If the decision is not satisfactory to either the employee or the Association, then either may appeal the grievance within ten (10) days from the date of the decision directly to a neutral referee agreed to by the Company and the Association. In the event the parties fail to agree on a neutral within the specified period, the neutral shall be appointed under the provisions of Section Seven, First (a), of the Railway Labor Act. The decision of the neutral referee shall be final and binding.

3. During the period a grievance is being handled under the provisions of this Section, and until final award by the neutral referee, the employee shall not be discharged from the Company nor lose any seniority rights because of non-compliance with the terms and provisions of this Section.

(f) An employee discharged by the Company under the provisions of this paragraph shall be deemed to have been "discharged for cause" within the meaning of the terms and provisions of this Agreement.

(g) It is agreed that the Company shall not be liable for any time or wage claims for any employees discharged by the Company pursuant to a written order by an authorized Association representative under the terms of this Section.

SECTION 27 - PAYROLL DEDUCTION OF DUES (Checkoff)

(a) During the life of this agreement the Company agrees to deduct from the pay of each member of the Association and remit to the Association, membership dues uniformly levied, in accordance with the Constitution and Bylaws of the Association, and as prescribed by the Railway Labor Act, as amended, provided such member of the Association voluntarily executes on a form to be supplied by the Association, the authorization for checkoff of Association dues, herein called "Checkoff Form."

(b) Checkoff forms duly executed shall be delivered to the Payroll Department of the Company. Deductions authorized by Checkoff Form shall begin on the first pay day occurring more than five (5) days following receipt of such Checkoff Form.

SECTION 28 - RATES OF PAY

(a) Employees hereunder shall be paid minimum monthly salary rates based on length of service, in accordance with Schedule A to this agreement.

(b) Employees assigned to a higher-rated classification or position for a period of one (1) week or more shall receive the higher rate for all time worked on such assignment. Employees temporarily assigned to lower-rated classification or positions shall not have their rates reduced.

(c) When there is a sufficient change in the duties of a position, the position will be redesignated in accordance with the designations set forth in this Section, and when redesignated the position will be filled in accordance with Section 11. Established positions will not be discontinued and new ones created under the same or different titles covering relatively the same class or grade of work which will have the effect of reducing the rate of pay or evading the application of this agreement.

(d) The rate for any new position will be fixed by agreement between the Company and the Association.

(e) Shift Premiums: 1-1-67 11-1-67 11-1-68

1. Afternoon 1200-1800	3 cents	9 cents	12 cents
Night 1800-0530	6 cents	15 cents	18 cents

2. Shift premiums shall be included when calculating overtime pay.

SECTION 29 - GENERAL

(a) Nothing in this agreement shall be construed to limit or deny any employee hereunder any rights or privileges to which he may be entitled under the provisions

BEST COPY

from the original

of the Railway Labor Act, as amended.

(b) The Company will provide free of charge each employee with a copy of this agreement, printed and bound in a convenient pocket-size booklet.

(c) The provisions of this agreement shall be binding upon any successor or merged company or companies, or any successor in the control of the Company.

(d) Bulletin boards will be provided inside all Company offices and facilities wherever employees covered by this agreement are assigned, marked "Air Line Employees Association," where Association notices of interest to the employees may be posted; however, no political circulars, propaganda, advertisements, or obscene matter will be placed on these bulletin boards.

(e) The Association shall furnish the Company written notice of all authorized Association activities in which the presence of an employee covered by this Agreement on a leave basis is required. The Company shall receive individually signed requests by the employee involved for the appropriate leave of absence and subject to the leave of absence section herein, the Company shall grant the leave.

The Company shall furnish the Master Executive Council Chairman with a space available annual pass marked "Service Charge Exempt!" The Company shall furnish free, Class 1 Company business, space available, trip passes, with no service charge, to employees attending contract negotiation sessions, Adjustment Board meetings, and other Association business between ALEA and the Company.

(f) No one employee shall be required to free lift a piece of cargo in excess of a reasonable weight.

(g) The Company will not reduce or modify the present Group Insurance Plan without agreement with the Union.

(h) The Company will make available to all eligible employees under this agreement the Lake Central Airlines Fixed Benefit Pension Plan and will continue its contributions pursuant to the terms of the Plan.

SECTION 30 - DURATION

This agreement shall become effective as of November 1, 1966 and shall continue in full force and effect until February 1, 1970 and shall renew itself without change until each succeeding February 1 thereafter, unless written notice of intended change is served in accordance with Section 6, Title 1 of the Railway Labor Act, as amended, by either party hereto at least sixty (60) days prior to February 1 in any year.

In witness whereof, the parties hereto have signed this agreement this the 22nd day of October, 1966.

FOR LAKE CENTRAL AIRLINES, INC.

WITNESS:

/s/ Robert D. Collins

FOR THE FLEET AND PASSENGER SERVICE EMPLOYEES IN THE SERVICE OF LAKE CENTRAL AIRLINES, INC.

/s/ M. B. Wigderson, Director, Negotiating Department
CERTIFIED AS RATIFIED

Victor J. Herbert, President

LAKE CENTRAL AIRLINESSCHEDULE A

	<u>11-1-66</u>	<u>11-1-67</u>	<u>11-1-68</u>
STATION AGENTS			
CARGO AGENTS			
1st 6 months	395	410	420
2nd 6 months	410	425	435
2nd year	425	440	455
3rd year	440	460	475
4th year	455	485	500
5th year	470	510	525
6th year	485	530	545
7th year	505	555	570
8th year	525	585	600
9th year	555	600	625
10th year	---	---	650
FORMS AGENT			
TICKET AGENT			
RESERVATION AGENT			
1st 6 months	380	395	405
2nd 6 months	395	410	420
2nd year	410	425	440
3rd year	425	445	460
4th year	440	470	485
5th year	455	495	510
6th year	470	515	530
7th year	490	540	555
8th year	510	570	585
9th year	540	585	610
10th year	---	---	635
RAMP SERVICE AGENT			
BAGGAGE AGENT			
1st 6 months	350	370	380
2nd 6 months	360	380	390
2nd year	370	390	400
3rd year	385	410	425
4th year	400	425	440
5th year	410	445	460
ASSISTANT STATION MANAGER	\$45 above Station Agent		
CHIEF AGENT	\$35 above Reservation Agent		
LEAD AGENT	\$35 above Station Agent		
RELIEF AGENT	\$30 above applicable agent		

AGREEMENT
between
LAKE CENTRAL AIRLINES, INC.
and the
FLEET AND PASSENGER SERVICE EMPLOYEES
in the service of
LAKE CENTRAL AIRLINES, INC.
as represented by the
AIR LINE EMPLOYEES ASSOCIATION, INTERNATIONAL
COVERING THE ESTABLISHMENT AND MAINTENANCE OF
A SYSTEM BOARD OF ADJUSTMENT

IT IS MUTUALLY AGREED THAT:

- (a) 1. The term "Company" as used herein shall be construed to mean LAKE CENTRAL AIRLINES, INC.
 - 2. The term "Association" as used herein shall be construed to mean the AIR LINE EMPLOYEES ASSOCIATION, INTERNATIONAL.
 - 3. The term "Fleet and Passenger Service Employees' Agreement" as used herein shall be construed to mean the agreement between Lake Central Airlines, Inc. and the Fleet and Passenger Service Employees in the service of Lake Central Airlines, Inc., as represented by the Air Line Employees Association, International, dated October 22, 1966, or any extension or renewal of that agreement.
- (b) In compliance with Section 204, Title II, of the Railway Labor Act, as amended, there is hereby established a System Board of Adjustment for the purpose of adjusting and deciding disputes which may arise under the terms of the Fleet and Passenger Service Employees' Agreement and any amendments or additions thereto and which are properly submitted to it, which Board shall be known as "Lake Central Airlines' Fleet and Passenger Service Employees' System Board of Adjustment," hereinafter referred to as the "Board."
- (c) The Board shall consist of four members, two of whom shall be selected and appointed by the Association and two by the Company; and such appointees shall be known as "Adjustment Board Members."
- (d) The four members shall serve for one year from the date of their appointment or until their successors have been duly appointed. Vacancies in the membership of the Board shall be filled in the same manner as is provided herein for the selection and appointment of the original members of the Board.
- (e) The Board shall have jurisdiction over disputes between any employee covered by the Fleet and Passenger Service Employees' Agreement and the Company growing out of grievances or out of interpretation or application of any of the terms of the Fleet and Passenger Service Employees' Agreement. The jurisdiction of the Board shall not extend to proposed changes in hours of employment, rates of compensation, or working conditions covered by existing agreements between the parties hereto.
- (f) The Board shall consider any dispute properly submitted to it by the president of the Association or by the Company in which the dispute originated when such dispute has not been previously settled in accordance with the terms provided for in the Fleet and Passenger Service Employees' Agreement.
- (g) Appointments of members of the Board shall be made by the respective parties within thirty (30) days from the date of the signing of this Agreement and said appointees shall meet in the city of Indianapolis, Indiana, within forty-five (45)

days from the date of the signing of this agreement, and shall organize and select a chairman and vice chairman, both of whom shall be members of the Board. The term of the office of chairman and vice chairman shall be one year; and thereafter the Board shall designate one of its members to act as chairman and one to act as vice chairman for one year terms. Each officer so selected shall serve for one year or until his successor has been duly selected.

The office of chairman shall be filled and held alternately by an Association member of the Board and by a Company member of the Board. When an Association member is chairman, a Company member shall be vice chairman, and vice versa. The chairman, or in his absence the vice chairman, shall preside at meetings of the Board and at hearings and shall have a vote in connection with all actions taken by the Board.

After the organization meeting referred to herein, the Board shall thereafter meet in the city where the general offices of Lake Central Airlines are maintained (unless a different place of meeting is agreed upon by the Board) during the first week in May and the first week in October of each year, provided that at such times there are cases filed with the Board for consideration, and shall continue in session until all matters before it have been considered, unless otherwise mutually agreed upon.

(h) All disputes properly referred to the Board for consideration shall be addressed to the chairman. Five copies of each petition, including all papers and exhibits in connection therewith, shall be forwarded to the chairman, who shall promptly transmit one copy thereof to each member of the Board. Each case submitted shall show:

1. Question or questions at issue.
2. Statements of facts.
3. Position of employee or employees.
4. Position of Company.

When possible, joint submissions should be made, but if the parties are unable to agree upon a joint submission, then either party may submit the dispute and its position to the Board. No matter shall be considered by the Board which has not first been handled in accordance with the appeals provisions of the Fleet and Passenger Service Employees' Agreement, including the rendering of a decision thereon.

(i) Upon receipt of notice of the submission of a dispute, the chairman shall set a date for the hearing, which shall be at the time of the next regular meeting of the Board, or if at least two members of the Board consider the matter of sufficient urgency and importance, then at such earlier date and at such place as the chairman and vice chairman shall agree upon, but not more than fifteen days after such request for meeting is made by at least two of said members, and the chairman shall give the necessary notices in writing of such meeting to the Board members and to the parties to the dispute.

(j) Employees covered by the Fleet and Passenger Service Employees' Agreement may be represented at Board hearings by such person or persons as it may choose and designate. Evidence may be presented either orally or in writing, or both.

On request of individual members of the Board, the Board may, by a majority vote, or shall at the request of either the Association representatives or the Company representatives thereon, summon any witnesses who are employed by the Company and who may be deemed necessary by the parties to the dispute, or by either party, or by the Board itself, or by either group of representatives constituting the Board.

The number of witnesses summoned at any one time shall not be greater than the number which can be spared from the operation without interference with the services of the Company.

(k) A majority vote of all members of the Board shall be competent to make a decision.

(l) Decisions of the Board in all cases properly referable to it shall be final and binding upon the parties hereto.

(m) In the event of a deadlock in the decision of any case properly referred to the Board, the Board shall endeavor to agree to a settlement of such dispute on terms mutually acceptable to a majority of its members; however, if such is not accomplished within thirty (30) days of the close of the respective hearings, then the Board shall refer the dispute or disputes to a neutral referee, who will then sit with the Board and hear the case or cases then pending which remain deadlocked. The neutral will be selected from the panel in the following manner:

1. The parties will alternately strike one name each until one person remains, which person will act as the neutral. The chairman shall have the first strike. If the neutral so selected is unable to serve within thirty (30) days (or date mutually agreed to by the Company and the Association representatives), then the parties shall strike from the remaining panel, repeating the process until an available neutral is selected.

The panel of neutrals are:

(1) Patrick J. Fisher	Indianapolis
(2) Daniel Lewis	LaPorte
(3) Arthur H. Pierson	Indianapolis
(4) James Willingham	Indianapolis
(5) Alexander B. Porter	Hanover

In the event none of the neutrals are available to serve on the date requested, then such date shall be mutually extended to such date as will first fit the nearest date of such request or, in the alternative, another neutral may be mutually selected.

2. The time and place of the hearing shall be mutually agreed to between the parties' representatives.

3. The neutral shall render a written decision no later than thirty (30) days from the close of the hearings or from the receipt of briefs and such shall be submitted to the other Board members who shall sign and affirm or deny agreement with the neutral's decision. A majority vote of the Board shall be final and binding upon the parties.

4. The members of the panel shall be reviewed by the legal counsel for the Company and the Association each June 1st and substitutions, deletions and/or additions may be accomplished by mutual agreement.

(n) Nothing herein shall be construed to limit, restrict, or abridge the rights or privileges accorded either to the employees or to the employer, or to their duly accredited representative, under the provisions of the Railway Labor Act, as amended, and the failure to decide a dispute under the procedure established herein shall not, therefore, serve to foreclose any subsequent rights which such law may afford or which may be established by the National Mediation Board by orders issued under such law with respect to disputes which are not decided under the procedure established herein.

- (o) The Board shall maintain a complete record of all matters submitted to it for its consideration and of all findings and decisions made by it.
- (p) Each of the parties hereto will assume the compensation, travel expense, and other expenses of the Board members selected by it.
- (q) Each of the parties hereto will assume the compensation, travel expense, and other expenses of the witnesses called or summoned by it. So far as space is available, witnesses who are employees of the Company shall receive free transportation over the lines of the Company or the lines of other companies with which the Company has exchange or reciprocal transportation agreements from the point of duty or assignment to the point at which they must appear as witnesses and return, to the extent permitted by law. The Board will make every effort to hold its hearings and investigations at points that will best serve the purposes of satisfactorily concluding the work of the Board with the least amount of travel for the greatest number of persons attending the proceedings.
- (r) The chairman and vice chairman, acting jointly, shall have the authority to incur such other expenses as, in their judgment, may be deemed necessary for the proper conduct of the business of the Board and such expense shall be borne one-half by each of the parties hereto. Board members who are employees of the Company shall be granted necessary leaves of absence for the performance of their duties as Board members. So far as space is available, Board members shall be furnished free transportation over the line of the Company, or the lines of other companies with which the Company has exchange or reciprocal transportation agreements, for the purpose of attending meetings of the Board, to the extent permitted by law.
- (s) It is understood and agreed that each and every Board member shall be free to discharge his duty in an independent manner, without fear that his individual relations with the Company or with the employees may be affected in any manner by any action taken by him in good faith in his capacity as a Board member.
- (t) This agreement shall become effective November 1, 1966 and shall continue in full force and effect until February 1, 1970 and shall renew itself without change until each succeeding February 1 thereafter, unless written notice of intended change is served in accordance with Section 6, Title I of the Railway Labor Act, as amended, by either party at least sixty (60) days prior to February 1 in any year.

IN WITNESS WHEREOF, the parties hereto have signed this agreement this the 22nd day of October, 1966.

FOR LAKE CENTRAL AIRLINES, INC.

WITNESS:

/s/ Robert D. Collins

FOR THE FLEET AND PASSENGER SERVICE
EMPLOYEES IN THE SERVICE OF LAKE
CENTRAL AIRLINES, INC.

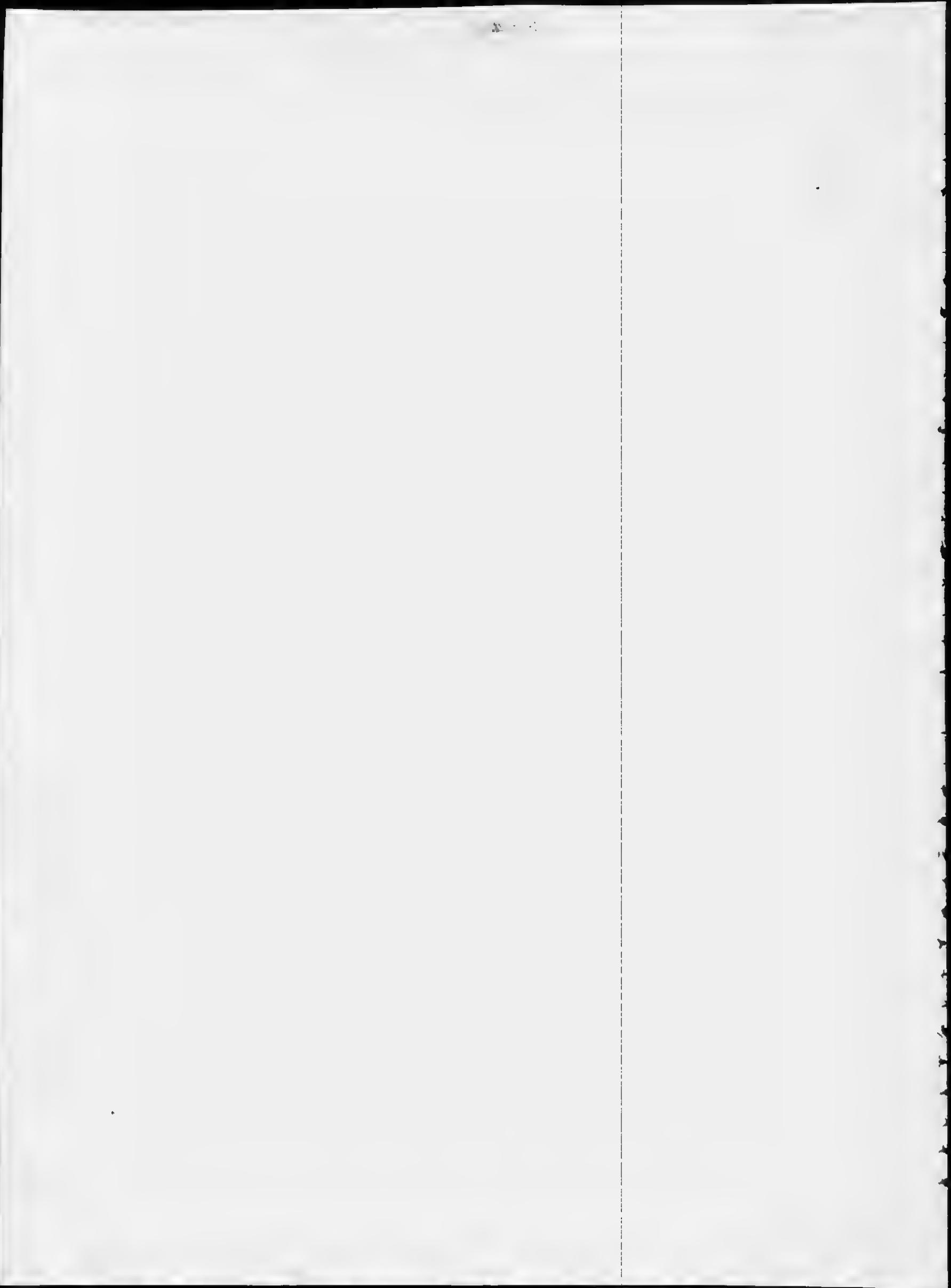
WITNESS:

/s/ Clare L. McCaul
/s/ Rollie W. Stapleton

/s/ M. B. Wigderson, Director
Negotiating Department, Air Line
Employees Association, Int'l.

CERTIFIED AS RATIFIED:

Victor J. Herbert, President



IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

AIRLINE EMPLOYEES ASSOCIATION,

Petitioner,

v.

CIVIL AERONAUTICS BOARD,

No. 22,243

Respondent,

and

ALLEGHENY AIRLINES, INC.,

Intervenor.

ON PETITION TO REVIEW AN ORDER OF
THE CIVIL AERONAUTICS BOARD

BRIEF FOR PETITIONER

United States Court of Appeals
for the District of Columbia Circuit

FILED FEB 24 1969

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INDEX

	<u>Page</u>
STATEMENT OF ISSUES PRESENTED	1
STATEMENT OF THE CASE	2
ARGUMENT	10
I. The Board Erred In Refusing To Require Allegheny To Honor The ALEA-Lake Central Agreement	10
II. The Burden Of Proof On The Cause Of Changes In Employment Should Be On The Employer.	22
CONCLUSION	23

CITATIONS

Cases:

Armstrong v. Manzo, 380 U.S. 545	23
Brotherhood of Railway and Steamship Clerks v. United Air Lines, 325 F.2d 576 (C.A. 6), writ of cert. dismissed as improvidently granted, 379 U.S. 26 . . . 6, 16, 17, 18	
*Burke v. Morphy, 109 F.2d 572 (C.A. 2).	21
Campbell v. United States, 365 U.S. 85	23
Division No. 14, Order of Railroad Telegraphers v. Leighty, 298 F.2d 17 (C.A. 4).	16
General Committee v. Missouri-Kansas-Texas Railroad Co., 320 U.S. 323.	17
General Committee v. Southern Pacific Co., 320 U.S. 338	17
I.C.C. v. Railway Labor Executives Association, 315 U.S. 373	10

* Cases chiefly relied upon.

	<u>Page</u>
*John Wiley & Sons v. Livingston, 376 U.S. 543	7, 11, 13, 15, 18, 19, 20, 21
*Labor Board v. Great Dane Trailers, 388 U.S. 26	23
L. B. Spear & Co., 106 N.L.R.B. 687	19
Machinists v. Central Airlines, 372 U.S. 682	15
Manning v. American Airlines, Inc., 329 F.2d 32 (C.A. 2).	20
Northwest Airlines v. C.A.B., 112 App. D.C. 384, 303 F.2d 395	6
*Order of Railroad Telegraphers v. Railway Express Agency, 321 U.S. 342	21
Retail Clerks v. Lion Dry Goods, 369 U.S. 17	19
South Carolina v. Katzenbach, 383 U.S. 301	23
Speiser v. Randall, 357 U.S. 513	23
Steelworkers v. Warrior & Gulf, 363 U.S. 574	12
Switchmen's Union of North America v. National Mediation Board, 320 U.S. 297	17
United-Capital Merger Case, 23 C.A.B. 307, affirmed <u>sub nom.</u> Northwest Airlines v. C.A.B., 112 App. D.C. 384, 303 F.2d 395	6, 7, 8, 16
United Indus. Wkrs. of Seafarers, Etc. v. Board of Trustees, 351 F.2d 183 (C.A. 5)	21
United States v. Lowden, 308 U.S. 225	10
United States v. New York, N.H. & H.R. Co., 355 U.S. 253	23

* Cases chiefly relied upon.

Page

*United States Gypsum Co. v. United Steelworkers
of America, 384 F.2d 38 (C.A. 5) 14

United-Western Acquisition Air Carrier Property,
11 C.A.B. 701, affirmed sub nom. Western
Airlines v. C.A.B., 194 F.2d 211. 11

Statutes:

Federal Aviation Act of 1958, 72 Stat. 731,
as amended, 49 U.S.C. 1301, et seq:

Section 401(h)	2
Section 408(b)	2
Section 1006(a).	2

Labor Management Relations Act of 1947,
61 Stat. 153, 29 U.S.C. §173(d):

Section 8(a)(3)	23
Section 203(d)	15

Railway Labor Act, 44 Stat. 577, as amended,
45 U.S.C. 151, et seq:

Section 2	15, 17
Section 2, Fourth	17
Section 2, Ninth	17, 18
Section 6	18, 20, 21
Section 201	20
Section 202	20
Section 204	15

Miscellaneous:

Memorandum for the United States as Amicus Curiae,
No. 31, Oct. Term, 1964. 18

* Cases chiefly relied upon.

IN THE
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AIR LINE EMPLOYEES ASSOCIATION,)
)
Petitioner,)
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v.)
)
CIVIL AERONAUTICS BOARD,) No. 22, 243
)
Respondent,)
)
and)
)
ALLEGHENY AIRLINES, INC.,)
)
Intervenor.)

BRIEF FOR PETITIONER

STATEMENT OF ISSUES PRESENTED

The issues presented by petitioner are as follows:

1. Did the Civil Aeronautics Board err in refusing to require the surviving carrier, as a condition of a merger between two air carriers, to honor the agreement between Petitioner Union and the other constituent corporation in the merger?
2. Did the Civil Aeronautics Board err in holding that under the labor protective provisions of its order the burden of proof will be on the

employee rather than the carrier in any dispute as to whether a change in employment status is due to the merger?

The present case has not previously been before this Court.

STATEMENT OF THE CASE

This case is before the Court on Petition to Review an order of the Civil Aeronautics Board (CAB) approving an application for a merger between Lake Central Airlines, Inc. (Lake Central) and Allegheny Airlines, Inc. (Allegheny). The Board is given jurisdiction to pass on such an application, and if it decides to grant the application, to do so "upon such terms and conditions as it shall find to be just and reasonable and with such modifications as it may prescribe," by §408(b) of the Federal Aviation Act of 1958, 72 Stat. 767, 49 U.S.C. §1378(b).^{1/} This Court is empowered to review the CAB's order by §1006(a) of that Act, 72 Stat. 795, 49 U.S.C. §1486(a).

The CAB proceeding was mainly concerned with the terms of the merger and its potential effect on air commerce. A recitation of those portions of the record would serve no useful purpose, since the present

1/ The order of the CAB also transferred to Allegheny a Certificate of Public Convenience and of Necessity for air transportation which had been issued to Lake Central. Such approval is declared to be a necessary condition of transfer by §401(h) of the Federal Aviation Act, 72 Stat. 754, 49 U.S.C. §1371(h), to which the same judicial review provisions apply.

petition raises only questions relating to the impact of the merger on the employees of Lake Central. The facts pertinent to those issues are undisputed, and can be briefly stated.

For several years representatives of Lake Central and of Allegheny had discussed the possibility of merger between these companies. In August, 1967, after both completed respective financing programs, the companies resumed negotiations. As the Board's hearing examiner put it, "to a large extent [these] focused on the ratio of exchange of stock of the two companies." An agreement was ultimately reached as of October 18, 1967, and the companies promptly filed with the CAB their Joint Application ^{2/} for approval of merger and transfer of certificate.

The agreement provided that Lake Central would be merged into Allegheny and the latter would be the surviving corporation and carrier. The only provision of the agreement dealing expressly with employees is Article V:

"The Surviving Corporation will accept reasonable labor protective provisions of the character and extent previously prescribed by the Civil Aeronautics Board in similar situations, which provide, among other things, for allowances for certain employees who may be displaced or dismissed as the result of the merger."

2/ The agreement was placed into the record as appendix A to the Joint Application, and it is reproduced in the Joint Appendix (JA 248-271). On January 23, 1968, the terms of the merger were changed in respects which are of no present relevance.

Article VIII of the agreement provided in part that all property of either of the Constituent Corporations (Lake Central and Allegheny) would be vested in the Surviving Corporation (Allegheny) and that "all debts, liabilities and duties of the respective Constituent Corporations shall upon the effective date of the merger attach to the Surviving Corporation, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it." (JA 9-10).

Lake Central had five collective agreements with four labor organizations. That of petitioner ALEA covered Lake Central's Fleet and Passenger Service Employees. ^{3/} Each of these unions moved to intervene in the merger proceeding to protect these agreements and the other interests of the employees they represented. As ALEA said in its motion (JA 23):

"On or about the first day of November, 1966, the Petitioner, Air Line Employees Association, International, as collective bargaining agent for the fleet and passenger service employees in the service of Lake Central Airlines, Inc. entered into an agreement with Lake Central Airlines, Inc. The said agreement contains all of the terms and conditions of employment of the said fleet and passenger service employees employed by Lake Central Airlines, Inc., including a recognition clause, a purpose clause, a

3/ We list below the other union agreements to which Lake Central was a party (JA 55):

<u>Class and Craft</u>	<u>Union</u>	<u>Expiration Date</u>
Stewardesses	ALPA	3/1/68
Pilots	ALPA	8/1/68
Dispatchers	ALDA	6/30/69
Mechanics	IBT	1/1/70

scope clause, a status clause, definition provisions, holidays and vacations provisions, provisions relating to sick leave, leaves of absence and vacancies, investigation and discipline provisions, wage provisions and other miscellaneous matters. The agreement further contains material relating to the establishment and maintenance of a System Board of Adjustment."

Section 29(c) of the ALEA-Lake Central agreement provides:

"The provisions of this agreement shall be binding upon any successor or merged company or companies, or any successor in the control of the Company."
(JA 89, 266).

The agreement was to be in force until at least February 1, 1970 (JA 86, 266).

The unions' motions to intervene were granted (JA 38).

Allegheny had no contract with any union covering its fleet and passenger employees. It does, however, have agreements covering three
4/
other classes of employees, as set forth in the margin.

Allegheny has nonetheless consistently taken the position that it is not obligated to honor the duties contracted by Lake Central with petitioner and other labor organizations (JA 46, 116, 119).

ALEA and the other unions which had agreements with Lake Central urged that Allegheny not be permitted to abrogate them and that Allegheny

<u>4/</u>	<u>Class and Craft</u>	<u>Union</u>	<u>Expiration Date</u>
	Mechanics	IAM	12/31/68
	Pilots	ALPA	9/30/68
	Hostesses	ALPA	9/30/69

IAM, the one union which had a contract with Allegheny but not with Lake Central, was also permitted to intervene by the Hearing Examiner (JA 54).

be required, as a condition of the merger, to assume all the outstanding
^{5/} collective bargaining agreements of Lake Central. Allegheny, however,
took the position that the labor agreements negotiated by Lake Central are
not legally applicable to the employees of Lake Central when they become
employees of Allegheny. The Hearing Examiner resolved this controversy
in favor of Allegheny, following the CAB's decision in the United-Capital
^{6/} Merger Case, 33 CAB 307, wherein the CAB refused to require United,
the surviving carrier, to adopt a contract which Capital had with the
Brotherhood of Railway and Steamship Clerks. He also declared, on the
authority of a Sixth Circuit decision arising out of the United-Capital
^{7/} merger that the dispute must be regarded as one over representation
rather than contract, and therefore within the exclusive province of the
National Mediation Board.

5/ ALEA also requested that its contract with Lake Central be made
applicable to the Allegheny employees who had not been employed by Lake
Central. We no longer press this claim.

6/ The merger was upheld by this Court without consideration of the labor
issues, the affected union having dismissed its petition for review.
Northwest Airlines v. C.A.B., 112 App. D.C. 384, 303 F.2d 395.

7/ Brotherhood of Railway and Steamship Clerks v. United Air Lines, 325
F.2d 576, writ of cert. dismissed as improvidently granted, 379 U.S. 26.
This case is discussed at pp. 16-19, infra.

The Examiner also rejected the Unions' reliance on John Wiley & Sons v. Livingston, 376 U.S. 543, wherein the Supreme Court had required a successor employer to arbitrate whether and to what extent he was bound by a contract between his predecessor and the union which represented the latter's employees:

"Since the labor protective provisions of the United-Capital Merger Case are to be adopted here, and since they are wholly devoted to affording protection to the employees from a change in the employment relationship, the purpose of the Wiley case is served without the imposition of the condition sought by ALDA and the other unions. The air carriers involved in this case, unlike the publishing firms in the Wiley case, are subject to economic regulation by an administrative agency which has a long history of cushioning the effects of mergers on employees with appropriate safeguards. The Board has done so without attempting to enforce alleged contractual rights or becoming embroiled in disputes over labor representation. In any event, it must be stressed that it is not for the Board to decide whether Wiley requires enforcement of the Lake Central labor agreements. Since ALDA argues that the issue is one of contract, its recourse is to the courts, not the Board, which is hardly the forum for deciding such an issue as well as any questions of representation.

"Considering the ruling of the Circuit Court in the BRCA case as to the nature of the dispute between BRC and United, the similarity between the relevant facts in the United-Capital Merger Case and those of the instant case, and the Board's decision in the latter case on the point at issue, it is clear that the contentions of the labor unions in support of the condition should be rejected.

"In view of all of the foregoing and the evidence of record, it is found, in accordance with the Board's decision in the United-Capital Merger Case, that the condition requested by the unions should not be imposed; that the dispute between the unions and Allegheny over Lake Central's

collective bargaining agreements is a matter to be worked out between them; and that the unions have not demonstrated that the failure to require the requested condition will expose Lake Central's employees to any economic injury, nor have they offered any other persuasive reason why the Board, as a matter of policy, should grant the relief requested." (JA 189-190).

Because the Examiner incorporated the United-Capital protective conditions by reference in his order (JA 193, 198), we have set them forth in the Joint Appendix (JA 241-247). Basically, they provide that compensatory allowances shall be paid to employees who are affected by changes in employment "solely due and resulting from" the merger, or who are required to change their residence as a result. 33 CAB 307-347. The unions requested several modifications of those provisions, in addition to the requirement that the predecessor agreements be kept in effect. We urge only one of these in this review proceeding: we submit that in any dispute as to whether a change in employment status is "solely due and resulting from" the merger, the burden of proof shall be imposed on the carrier. This request was denied by the Examiner without discussion other than reliance on CAB precedent (JA 190-191).

The Examiner approved the merger, subject, as we have said, to the United-Capital labor protective provisions, and other conditions with no bearing on the present issues. One of the unions, ALDA, filed a request for discretionary review with the CAB, presenting both the questions whether Allegheny should be required to live up to Lake Central's union

agreements and whether the employee or the carrier should bear the burden of proof in a dispute as to whether a change in status resulted from the merger. On June 24, 1968, the Board entered an order whereby discretionary review was denied and the Hearing Examiner's decision thereby became final (JA 222). The companies having complied with certain conditions precedent, the Board on July 1, 1968, issued an order amending the operating certificates involved (JA 226-236).

ARGUMENT

I. The Board Erred In Refusing To Require Allegheny To Honor
The ALEA-Lake Central Agreement

Because this case turns on the relationship between contractual obligations and public laws, it is important at the outset to make clear the nature of relief sought from the Board. This is a proceeding on an application for merger between two air carriers. In the exercise of its power to approve such mergers, and to impose conditions thereon, the Board has in this case, as in many others, prescribed protections for employees of the carrier which has gone out of business as a result of the merger proceeding. As the Board has said:

"A route transfer or a merger or a similar transaction presumably involves benefits to the stockholders of the companies who are parties to it. On balance, it must also benefit the public as a whole; otherwise we would disapprove it. Very often, these benefits to the stockholders and to the public will be at the expense of some of the employees of the companies involved. We think it only equitable that in such circumstances the hardships borne by adversely affected employees should be mitigated by provisions for their benefit.

"This consideration is reenforced by the practical one adverted to in United States v. Lowden [308 U.S. 225] and I.C.C. v. Railway Labor Assn. [315 U.S. 373]. The Supreme Court there emphasized 'the national interest in the stability of the labor supply available to the railroads.' There is also an obvious national interest in taking steps to see that route transfers and mergers which are in the public interest should not be prevented or delayed by labor difficulties arising out of hardships to employees incident to such route transfers or mergers.

"Because of these specific considerations, and because we are bound to pay considerable deference to determinations by Congress and by the Interstate Commerce Commission of what is desirable public policy in comparable situations, we find that it would be just and reasonable and in the public interest to impose in this proceeding conditions for the benefit of adversely affected employees." United-Western Acquisition Air Carrier Property, 11 CAB 701, 708, aff'd sub nom. Western Airlines v. CAB, 194 F.2d 211 (C.A. 9).

The major question in this case is whether the Board erred when it refused to impose as one of the labor protective provisions a requirement that Allegheny honor the agreement between Lake Central and ALEA with respect to Lake Central's former employees.

We submit that the Board did err, for it failed to follow John Wiley & Sons v. Livingston, 376 U.S. 543. That case squarely held (1) that rights under a collective bargaining agreement do not expire simply because the party to the contract has been replaced by another employer as a result of a corporate merger and (2) that the successor employer can be required to arbitrate under the arbitration provisions of the original agreement the extent to which its other obligations are binding upon him.
8/

8/ Since only the arbitration clause was held to be definitely binding on the successor in Wiley, the Supreme Court's decision, standing alone, compels only the conclusion that the CAB should have required Allegheny in this case to assume the obligations of the arbitration clause, and to arbitrate before a system board of adjustment established thereunder the extent to which the other provisions of the agreement are binding on it. An order of this Court directing the CAB to modify its order to achieve that result would be entirely acceptable to petitioner. However, we shall urge below that given the premise of Wiley that a successor cannot simply walk away from a union

The heart of the Supreme Court's opinion is as follows:

"Employees, and the union which represents them, ordinarily do not take part in negotiations leading to a change in corporate ownership. The negotiations will ordinarily not concern the well-being of the employees, whose advantage or disadvantage, potentially great, will inevitably be incidental to the main considerations. The objectives of national labor policy, reflected in established principles of federal law, require that the rightful prerogative of owners independently to rearrange their businesses and even eliminate themselves as employers be balanced by some protection to the employees from a sudden change in the employment relationship. The transition from one corporate organization to another will in most cases be eased and industrial strife avoided if employees' claims continue to be resolved by arbitration rather than by 'the relative strength . . . of the contending forces,' Steelworkers v. Warrior & Gulf, 363 U.S. 574 at 580.

"The preference of national labor policy for arbitration as a substitute for tests of strength between contending forces could be overcome only if other considerations compellingly so demanded. We find none. While the principles of law governing ordinary contracts would not bind to a contract an unconsenting successor to a contracting party, a collective bargaining agreement is not an ordinary contract. '. . . [I]t is a generalized code to govern a myriad of cases which the draftsmen cannot wholly anticipate The collective agreement covers the whole employment relationship. It calls into being a new common law -- the common law of a particular industry or of a particular plant.' Warrior & Gulf, supra, at 578-579 (footnotes omitted). Central to the peculiar status and

agreement with his predecessor, the successor clause of the ALEA-Lake Central agreement by its own terms, and read in light of the Railway Labor Act, imposes an inescapable duty on Allegheny to assume the whole agreement.

function of a collective bargaining agreement is the fact, dictated both by circumstance, see id., at 580, and by the requirements of the National Labor Relations Act, that it is not in any real sense the simple product of a consensual relationship. Therefore, although the duty to arbitrate, as we have said, supra, pp. 546-547, must be founded on a contract, the impressive policy considerations favoring arbitration are not wholly overborne by the fact that Wiley did not sign the contract being construed. This case cannot readily be assimilated to the category of those in which there is no contract whatever, or none which is reasonably related to the party sought to be obligated. There was a contract, and Interscience, Wiley's predecessor, was party to it. We thus find Wiley's obligation to arbitrate this dispute in the Interscience contract construed in the context of a national labor policy." 376 U.S. 543, 549-551 (footnotes omitted).

In declining to follow Wiley, the CAB Examiner declared that because other labor protective provisions were to be adopted which "are wholly devoted to affording protection to the employees from a change in the employment relationship, the purpose of the Wiley case is served without the imposition of the condition" that Allegheny honor the ALEA-Lake Central agreement (JA 189). In this connection, the record shows that Allegheny did not contemplate the discharge of any employees as a result of the merger, that it intended to pay them higher wages than they had received at Lake Central and that it was going to merge them into the Allegheny seniority list. Moreover, under the protective provisions employees who can establish that they were discharged solely because of the merger are entitled to

9/

dismissal allowances. This reasoning is subject to the fundamental objection that the Lake Central employees enjoyed benefits under the agreement for which the CAB's protective provisions are not, and cannot be, an 10/ adequate substitute. Thus, not only their wages but also their other terms and conditions of employment were established by contract, rather than determined by the "policies" unilaterally determined by the employer (cf. JA 46, 118). In enforcing their contract rights they did not stand alone, but had the aid of their collective representative in a grievance procedure which culminated in a decision by a neutral arbitrator.

"It is one thing for an employee or a group of employees to have rights giving rise to benefits which are immediately due. It may be quite another thing to make them effectual. Here the disparity in economic strength and resources is sharply revealed. Here the worker needs an advocate able to match these opposing strengths. To leave the individual worker to his own devices and resources in the name of legislation designed to equalize positions is to ignore the rich history of labor-management relations and to frustrate a primary aim of such legislation. Industrial strife -- and its opposite industrial peace -- can come from big issues. But frequently it comes from small, occasionally almost petty, controversies. Nationwide activity can grind to a halt over the question of who is to throw a switch. Problems which to the outsider seem petty are thought by the adversaries to be matters of great principle, if not principal."

United States Gypsum Co. v. United Steelworkers of America, 384 F.2d 38, 45-46 (C.A. 5).

9/ That protection is limited by the requirement that the employee prove to show that this was the reason for the discharge. See pp. 22-23, infra. Of course, it is even more difficult and expensive for the employee to prosecute such a claim individually than to do so through his union.

10/ For example, seniority does not protect an employee from discharge where the employer retains his right to hire and fire at will, as he does, in the absence of a contractual commitment.

The loss of those rights constituted "a change in the employment relationship" (JA 189), directly resulting out of the merger, and the employees were entitled to the CAB's protection against such changes.

Moreover, the trial examiner misunderstood "the purpose of Wiley." That "purpose" was to implement the congressional policy embodied in §203(d) of the Labor Management Relations Act of 1947, 61 Stat. 153, 29 U.S.C. §173(d), which declares arbitration to be "the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective bargaining agreement." Air carriers, like Lake Central and Allegheny, are subject to §204 of the Railway Labor Act, 49 Stat. 1189, 45 U.S.C. §184, which imposes upon them and their representatives of their employees the "duty" to create system boards of adjustment. The function of these boards as the Supreme Court has made clear, is "to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules or working conditions," Section 2 of the Railway Labor Act, 45 U.S.C. §151a. See Machinists v. Central Airlines, 372 U.S. 682, 689. The Supreme Court having derived from the permissive arbitration provision of the LMRA the duty of a successor employer to arbitrate the extent to which he is bound by his predecessor's contract in Wiley, that duty is inescapable for employers who are subject to the mandatory arbitration provisions of the Railway Labor Act.

Not only did the trial examiner purport to distinguish Wiley, he concluded that the unions' claims that Allegheny should be required to honor their contracts with Lake Central did not create a contract claim at all, but rather was a question of representation. In so holding, the examiner relied on a decision of the Sixth Circuit in Brotherhood of Railroad and Steamship Clerks v. United Airlines, 325 F. 2d 576 (C. A. 6), writ of cert. dismissed as improvidently granted, 379 U.S. 26.

United Airlines was a suit for a declaratory judgment brought by one union to determine whether the agreement between it and Capital Airways was binding on United Airlines after the CAB approved the merger of those two carriers.^{11/} The Court of Appeals, affirming the District Court, dismissed the complaint for want of jurisdiction. Purporting to look "through form to substance," the Court of Appeals determined that "although the suit is cast in the form of an action under the law of contracts, it in fact involves a representation dispute. Even though an action is brought as one sounding in contract the courts have no jurisdiction 'where validity of the contract depends upon the merits of a representation dispute.' Division No. 14, Order of

11/ The hearing examiner also relied on the CAB's own decision in the United-Capital Merger Case, 33 CAB 307, where the CAB refused to require United to assume Capital's agreement with the Brotherhood of Railroad and Steamship Clerks. The CAB said that it would not involve itself in contractual disputes between the parties but that the union and employer should work them out together. 33 CAB 330-331. The trial examiner adopted this language in his opinion in this case (JA 190). We have difficulty in understanding what such discussions could accomplish since Allegheny made it perfectly clear on the record that they would not accept the agreement and that they were not legally obligated to do so (JA 46, 12-13, 115, 116, 119).

Railroad Telegraphers v. Leighty, 298 F.2d 17, 20 (C.A. 4)." 325 F.2d at 579. Having taken that view of the litigation, the Court held that it was within the exclusive jurisdiction of the National Mediation Board. We agree that §2, Ninth of the Railway Labor Act, 45 U.S.C. §152, Ninth vests exclusive jurisdiction in the board over any "disputes as to who are representatives under the Railway Labor Act of certain employees," 325 F.2d at 578. But with all due respect to the Sixth Circuit, we submit that it erred in so characterizing the controversy before it. Our position is well stated in the memorandum which the United States filed when the United Airlines case was before the Supreme Court:

"Contrary to the decisions below, we believe that the present controversy between the Brotherhood and United is not a dispute under Section 2, Ninth, of the Railway Labor Act. That Section provides a means for determining the representative of employees covered by the Act. 'The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class * * *' (Section 2, Fourth). When there is a 'dispute' 'as to who are the representatives of * * * employees,' Section 2, Ninth, provides that either party to the dispute may require the National Mediation Board to make an investigation (which may include an election among the employees involved) and to designate and certify the representative. Under the cases cited by the courts below (Switchmen's Union of North America v. National Mediation Board, 320 U.S. 297; General Committee v. Missouri-Kansas-Texas Railroad Co., 320 U.S. 323; General Committee v. Southern Pacific Co., 320 U.S. 338), jurisdiction to determine a representative under this procedure is exclusively committed to the Board. Therefore, if the dispute in this case were over the selection or determination of a representative of United's present employees for purposes of collective bargaining, the Board would clearly have exclusive jurisdiction.

"The present dispute, however, does not concern the determination of a representative for the future. This controversy is over the present effect of a contract negotiated by a representative previously selected by Capital's employees under the Section 2, Ninth, procedure.

* * *

"The question here is not who will ultimately be the Section 2, Ninth, representative certified by the Board. Nor is it even what effect a new certification will have upon the old agreement. The question is to what extent the Brotherhood-Capital agreement continues to be applicable to the employment relations between United and the former Capital employees in the period after the merger but before the selection of a representative for the merged unit. The Brotherhood seeks to establish that, regardless of which union, if any, might ultimately be designated to represent United's employees, it was incumbent upon United to honor the Brotherhood-Capital agreement at least until that agreement was altered in accordance with the procedures prescribed by the Act (Section 6, 45 U.S.C. 156). The Board's authority under Section 2, Ninth, does not permit it to adjudicate this contractual relationship between employer and union pending the outcome of a representation proceeding." 12/

Similarly, the question in the present case is the extent to which the ALEA-Lake Central agreement continues to be applicable to the employment relations between Allegheny and the former Lake Central employees. The distinction which the Sixth Circuit failed to draw in United Airlines is one which the Supreme Court fully appreciated in Wiley itself, 376 U.S. 543, 551-552, note and text at n. 5:

12/ Memorandum For The United States as Amicus Curiae, No. 31, Oct. Term, 1964, pp. 7-10.

"This Union does not assert that it has any bargaining rights independent of the Interscience agreement; it seeks to arbitrate claims based on that agreement, now expired, not to negotiate a new agreement. 5/

5/ The fact that the Union does not represent a majority of an appropriate bargaining unit in Wiley does not prevent it from representing those employees who are covered by the agreement which is in dispute and out of which Wiley's duty to arbitrate arises. Retail Clerks Intl Assn., Local Unions Nos. 128 & 633 v. Lion Dry Goods, Inc., 369 U.S. 17. There is no problem of conflict with another union, cf. L.B. Spear & Co., 106 N.L.R.B. 687, since Wiley had no contact with any union covering the unit of employees which received the former Interscience employees * * *."

This reasoning undermines both the Sixth Circuit's analysis in United and the decision below in this case.

As we noted at the outset, Wiley v. Livingston by its own terms bound the successor employer only to the arbitration provision of the union's agreement with the predecessor; the Supreme Court left to arbitration the question of what other obligations, if any, the agreement imposed on the successor. Thus, Wiley standing alone might entitle the union only to an order that Allegheny must arbitrate before a system board of adjustment, the extent to which it is bound by the ALEA-Lake Central agreement. But given the principle of Wiley that a contract between a union and an employer is not abrogated simply because the latter loses its corporate identity by merger, Allegheny's obligation to assume the entire agreement between ALEA and Lake Central is clear from the agreement itself, which differs materially from that in Wiley.

The contract between the union (District 65) and Wiley's predecessor (Interscience) contained no successor clause. Moreover, District 65 made claims relating to a period after the expiration date of that agreement. Thus there was a wide range of problems for the arbitrator. See 376 U.S. at 554-555. But unlike District 65 and Interscience, petitioner and Lake Central "expressly contemplated" (id. at 554) the possibility of merger in their agreement, and unambiguously declared that its provisions "shall be binding upon any successor or merged company or companies" (JA 89, 266). Moreover, the agreement between ALEA and Lake Central was not due to expire until February 1, 1970, and unlike the union in Wiley, petitioner has asserted no rights which would extend beyond that expiration date. Additionally, both the successor clause and the duration provision of the agreement must, of course, be read in light of Section 6 of the Railway Labor Act, ^{13/} 45 U.S.C. §156 which provides that an agreement between a carrier and representatives of his employees may not be abrogated except after notice given by either party to the agreement any "intended change in agreements affecting rates of pay, rules or working conditions." As Judge Friendly has written, "The effect of §6 is to prolong agreement subject to its provisions regardless of what they say as to termination." Manning v. American Airlines, Inc., 329 F.2d 32, 33 (C.A. 2). Any change in working conditions

13/ This provision is made applicable to air carriers by §§ 201 and 202 of the Railway Labor Act, 45 U.S.C. §§ 181 and 182.

imposed in the absence of a Section 6 notice is ineffective and without force.

Order of Railroad Telegraphers v. Railway Express Agency, 321 U.S. 342, 347; United Indus. Wkrs. of Seafarers, Etc. v. Board of Trustees, 351 F.2d 183, 190 (C.A. 5); Burke v. Morphy, 109 F.2d 572, 575 (C.A. 2). The latter case reinforces the Wiley principle with respect to carriers subject to the Railway Labor Act, for it held that an agreement between a union and a railroad was binding on the latter's receiver in the absence of a §6 notice. Consequently, the CAB's order undermined not only petitioner's private contract rights, but also the public policy declared in the Railway Labor Act.

14/

14/ It can hardly be argued, after Wiley and in light of the express successorship provisions of this contract, that an employer who succeeds the original signatory as a result of a voluntary merger agreement is in a more favorable position.

II. The Burden Of Proof On The Cause Of Changes In Employment
Should Be On The Employer

The labor protective provisions of the order provide for compensatory allowances to employees who may be affected by the merger. Section 1 of the protective provisions declares that "it is the intent that such conditions are to be restricted to those changes in employment solely due and resulting from such merger." Section 13 declares that any dispute or controversy with respect to these protections which cannot be settled by the carrier and the employee or his authorized representative may be referred to an arbitration committee for consideration and determination. Unions have repeatedly urged that the CAB place upon the employer the burden of proof when a dispute arises as to whether a change in employment status is due to the merger. The CAB has consistently denied such relief (JA 192, n. 37) and those decisions were followed without further discussion in this case. It can easily be demonstrated that the CAB's rule is plainly unreasonable and contrary to accepted legal principles. The discharge of an employee is the action of the employer. The employer will always know, and the employee will often not know, the reasons for that action. If, for example, the asserted basis of the discharge is a loss of business by the employer, the information will be exclusively in the employer's possession. As the Supreme Court has held, "the ordinary rule, based on considerations of fairness, does not place the burden upon a litigant of establishing facts

peculiarly within the knowledge of his adversary." Campbell v. United States, 365 U.S. 85, 96, following United States v. New York, N.H. & H.R. Co., 355 U.S. 253, 256, n. 5. See also South Carolina v. Katzenbach, 383 U.S. 301, 332. This principle was applied by the Supreme Court in Labor Board v. Great Dane Trailers, 388 U.S. 26, 34:

"Thus, in either situation, once it has been proved that the employer engaged in discriminatory conduct which could have adversely affected employee rights to some extent, the burden is upon the employer to establish that he was motivated by legitimate objectives since proof of motivation is most accessible to him." (Emphasis in original.)

While the legal considerations under §8(a)(3) of the LMRA and the labor protective provisions of a CAB order are quite different, the considerations affecting the burden of proof are identical. In each instance, the employer's liability depends on the circumstances of action by him adversely affecting the employee. In both instances, the critical evidence is most accessible to him and he is therefore properly charged with the burden of proof. For, "It is plain that where the burden of proof lies may be decisive of the outcome." Speiser v. Randall, [357 U.S. 513] at 525; Armstrong v. Manzo, 380 U.S. 545, 551.

CONCLUSION

By reason of the foregoing, the Petition for Review should be granted and the order of the Board should be set aside with directions to impose as

conditions of the merger between Lake Central and Allegheny:

1. That Allegheny honor the contract between petitioner and Lake Central with respect to the former Lake Central employees; and
2. That in any dispute arising under the labor protective provisions as to whether a change in employment is "solely due and resulting from" the merger, the burden of proof with respect to that issue shall be on Allegheny.

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INDEX

	<u>Page</u>
COUNTERSTATEMENT OF QUESTIONS PRESENTED.	1
COUNTERSTATEMENT OF THE CASE	2
SUMMARY OF ARGUMENT.	6
ARGUMENT	10
Introduction.	10
I. ALEA's petition for review should be dismissed because ALEA failed to exhaust its administrative remedies.	14
II. There is no merit in petitioner's substantive contentions, even if it were assumed arguendo that they were justiciable.	24
A. The Board's refusal to impose a condition requiring Allegheny to honor the ALEA/Lake Central agreement was not an abuse of discretion.	27
B. The Board's failure to include a provision in the labor protective conditions specifically requiring the employer to shoulder the burden of proof on the cause of any change in employment was not an abuse of discretion.	36
CONCLUSION	38
APPENDIX A	39
APPENDIX B	40

CITATIONS

Cases:

<u>Air Lines Pilots Ass'n Int'l v. Civil Aeronautics Board</u> , 124 U.S. App. D.C. 22, 360 F.2d 837 (1966). . . .	24, 26
<u>Alaska-Cordova Merger Case</u> , C.A.B. Order E-26083 (1967). . .	12, 37

Index Continued

	<u>Page</u>
Cases:	
<u>Harris v. Ribicoff</u> , 200 F. Supp. 318 (N.D.W.Va. 1961)	19
<u>Hennesey v. Securities and Exchange Commission</u> , 285 F.2d 511 (C.A. 3, 1961).	21, 22
* <u>International Brotherhood of Teamsters v.</u> <u>Allegheny Airlines, Inc.</u> , 69 L.R.R.M. 2891, 69 L.R.R.M. 2893 (D.D.C. 1968)	6, 29
<u>Island Airlines, Inc. v. Civil Aeronautics Board</u> , 363 F.2d 120 (C.A. 9, 1966).	15
* <u>John Wiley & Sons v. Livingston</u> , 376 U.S. 543 (1964).	8, 13, 26, 29, 30, 31, 32, 34, 35
<u>National Labor Relations Board v. District 50</u> , <u>United Mine Workers of America</u> , 355 U.S. 453 (1958). . .	15, 19
<u>Nebraska Department of Aeronautics v. Civil</u> <u>Aeronautics Board</u> , 298 F.2d 286 (C.A. 8, 1962)	27
<u>New England Air Express v. Civil Aeronautics Board</u> , 90 U.S. App. D.C. 215, 194 F.2d 894 (1952)	15
<u>North Atlantic Route Transfer Case</u> , 12 C.A.B. 124 (1950) .	10
<u>Northwest Airlines, Inc. v. Civil Aeronautics Board</u> , 142 U.S. App. D.C. 384, 303 F.2d 395 (1962)	3, 24, 27
<u>Ozawa v. United States</u> , 260 U.S. 178 (1922)	16
<u>Pan American-Grace Airways, Inc. v. Civil</u> <u>Aeronautics Board</u> , 85 U.S. App. D.C. 297, 178 F.2d 34 (1949)	27
<u>Pan American World Airways, Inc. v. Civil</u> <u>Aeronautics Board</u> , ____ U.S. App. D.C. ___, 392 F.2d 483 (1968)	14
<u>Railway Clerks v. Non-Contract Employees</u> , 380 U.S. 650 (1965)	30

(ii)

Index Continued

	<u>Page</u>
<u>Carriers:</u>	
<u>American Airlines, Inc. v. Civil Aeronautics Board</u> , 89 U.S. App. D.C. 365, 192 F.2d 417 (1951)	25
<u>Bellanca v. Nicolls</u> , 213 F.2d 20 (C.A. 1, 1954)	19
<u>Plaintiff-Mid-Continent Merger Case</u> , 15 C.A.B. 708 (1952)	10
* <u>Brotherhood of Railway and Steamship Clerks v. United Air Lines, Inc.</u> , 325 F.2d 576 (C.A. 6, 1963), <u>sought dismissed as improvidently granted</u> , 379 U.S. 26 (1964) 4,8,27,28,29,31,32	
<u>Chorbaiian v. Civil Aeronautics Board</u> , 229 F.2d 81 (C.A. 2, 1956)	26
<u>City of Pittsburgh v. Federal Power Commission</u> , 29 U.S. App. D.C. 113, 237 F.2d 741 (1956)	21,22
<u>Cox v. Folsom</u> , 228 F.2d 276 (C.A. 3, 1955)	19
<u>Delta-Chicago and Southern Merger Case</u> , 16 C.A.B. 647 (1952)	10
* <u>Deutsch v. United States Atomic Energy Commission</u> , U.S. App. D.C. ___, 401 F.2d 404 (1968)	26
<u>Federal Power Commission v. Colorado Interstate Gas Co.</u> , 248 U.S. 492 (1955)	15,19
<u>Flight Engineers' Int'l Ass'n v. Civil Aeronautics Board</u> , 118 U.S. App. D.C. 112, 332 F.2d 312 (1964)	26
<u>Flying Tiger Line, Inc. v. Civil Aeronautics Board</u> , 121 U.S. App. D.C. 332, 350 F.2d 462 (1965)	26
<u>Flying Tiger - Slick Merger Case</u> , 18 C.A.B. 326 (1954)	10
<u>Frontier-Central Merger Case</u> , C.A.B. Order E-25626 (1967)	12,37
<u>General Committee v. Missouri-Kansas-Texas R.R.</u> , 30 U.S. 323 (1943)	29
<u>General Committee v. Southern Pacific Co.</u> , 30 U.S. 338 (1943)	29

Index Continued

	<u>Page</u>
Cases:	
<u>Harris v. Ribicoff</u> , 200 F. Supp. 318 (N.D.W.Va. 1961)	19
<u>Hennesey v. Securities and Exchange Commission</u> , 285 F.2d 511 (C.A. 3, 1961)	21, 22
* <u>International Brotherhood of Teamsters v.</u> <u>Allegheny Airlines, Inc.</u> , 69 L.R.R.M. 2891, 69 L.R.R.M. 2893 (D.D.C. 1968)	6, 29
<u>Island Airlines, Inc. v. Civil Aeronautics Board</u> , 363 F.2d 120 (C.A. 9, 1966)	15
* <u>John Wiley & Sons v. Livingston</u> , 376 U.S. 543 (1964)	8, 13, 26, 29, 30, 31, 32, 34, 35
<u>National Labor Relations Board v. District 50</u> , <u>United Mine Workers of America</u> , 355 U.S. 453 (1958) . .	15, 19
<u>Nebraska Department of Aeronautics v. Civil</u> <u>Aeronautics Board</u> , 298 F.2d 286 (C.A. 8, 1962)	27
<u>New England Air Express v. Civil Aeronautics Board</u> , 90 U.S. App. D.C. 215, 194 F.2d 894 (1952)	15
<u>North Atlantic Route Transfer Case</u> , 12 C.A.B. 124 (1950) .	10
<u>Northwest Airlines, Inc. v. Civil Aeronautics Board</u> , 142 U.S. App. D.C. 384, 303 F.2d 395 (1962)	3, 24, 27
<u>Ozarka v. United States</u> , 260 U.S. 178 (1922)	16
<u>Pan American-Grace Airways, Inc. v. Civil</u> <u>Aeronautics Board</u> , 85 U.S. App. D.C. 297, 178 F.2d 34 (1949)	27
<u>Pan American World Airways, Inc. v. Civil</u> <u>Aeronautics Board</u> , ____ U.S. App. D.C. ___, 392 F.2d 483 (1968)	14
<u>Railway Clerks v. Non-Contract Employees</u> , 380 U.S. 650 (1965)	30

Index Continued

	<u>Page</u>
Cases:	
<u>Regents of the University of Georgia v.</u> Carroll, 338 U.S. 586 (1950)	26
<u>Representation of Employees of KLM Royal Dutch Airlines, 3 NMB Determination of Craft or Class 1 (1953)</u>	30
* <u>Ritz v. Civil Aeronautics Board,</u> 126 U.S. App. D.C. 6, 373 F.2d 666 (1967)	20, 23
<u>Rochester Telephone Corp. v. United States,</u> 307 U.S. 125 (1939)	26
* <u>Seaboard & Western Airlines, Inc. v. Civil Aeronautics Board,</u> 87 U.S. App. D.C. 78, 183 F.2d 975 (1950)	7, 15
<u>Switchmen's Union of North America v.</u> <u>National Mediation Board,</u> 320 U.S. 297 (1943)	29
<u>Transcontinental Bus System, Inc. v.</u> <u>Civil Aeronautics Board,</u> 383 F.2d 466 (C.A. 5, 1967) <u>cert. denied,</u> 390 U.S. 920 (1968)	26
<u>Turner v. Louisville & Nashville R.R.,</u> 67 L.R.R.M. 2617 (W.D. Ky. 1968)	29
<u>Unemployment Compensation Commission of Alaska v.</u> <u>Aragon,</u> 329 U.S. 143 (1946)	15
<u>United Air Lines, Inc. v. Civil Aeronautics Board,</u> 81 U.S. App. D.C. 89, 155 F.2d 169 (1946)	25
<u>United Air Lines, Inc. v. Civil Aeronautics Board,</u> 371 F.2d 221 (C.A. 7, 1967)	25
* <u>United-Capital Merger Case,</u> 33 C.A.B. 307 (1961)	3, 5, 8, 11, 27, 28, 29, 36
<u>United States v. American Trucking Ass'ns,</u> 310 U.S. 534 (1940)	16
<u>United States v. Pierce Auto Freight Lines, Inc.,</u> 327 U.S. 515 (1946)	25

Index Continued

	<u>Page</u>
Cases:	
• <u>United States v. Tucker Truck Lines, Inc.</u> , 344 U.S. 33 (1952)	15
<u>United-Western Acquisition Case</u> , 11 C.A.B. 701 (1950) . . .	10
<u>Western-Pacific Northern Merger Case</u> , C.A.B. Order E-25240 (1967)	16, 27
<u>Wilson and Co. v. United States</u> , 335 F.2d 788 (C.A. 7, 1964)	21, 22
Statutes:	
Federal Aviation Act of 1958, 72 Stat. 731, as amended, 49 U.S.C. 1301, <u>et seq.</u> :	
Section 408	2, 7, 10, 13, 24, 40
Section 1006.	7, 15, 17, 18, 19, 41
Administrative Procedure Act:	
Section 10(c)[5 U.S.C. 704]	17, 19, 42
Railway Labor Act, 44 Stat. 577, as amended, 45 U.S.C. 151, <u>et seq.</u> :	
Section 6	35
Section 202	42
Section 204	35, 42
Reorganization Plan No. 3 of 1961, 75 Stat. 837 .	16, 17, 18, 19, 43
Civil Aeronautics Board Regulations:	
14 C.F.R. 302.27.	19, 44
14 C.F.R. 302.28.	5, 19, 20, 44
Congressional Material:	
Hearings on the Reorganization Plans of 1961 Before a Subcommittee of the House Committee on Government Operations, 87th Cong., 1st Sess. (1961)	17

Index Continued

Congressional Material:

	<u>Page</u>
Hearings on the Reorganization Plans of 1961 Before the Senate Committee on Government Operations, 87th Cong., 1st Sess. (1961)	17
H.R. Rep. No. 510, 87th Cong., 1st Sess. (1961) . . .	17
Remarks of Congressman Fascell, 107 Cong. Rec. 10841 (June 20, 1961)	16

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22,243

AIR LINE EMPLOYEES ASSOCIATION,

Petitioner,

v.

CIVIL AERONAUTICS BOARD,

Respondent.

ALLEGHENY AIRLINES, INC.,

Intervenor.

ON PETITION FOR REVIEW OF AN ORDER OF THE
CIVIL AERONAUTICS BOARD

BRIEF FOR RESPONDENT

COUNTERSTATEMENT OF QUESTIONS PRESENTED

The issues presented by the Petitioner in the prehearing conference stipulation and its brief are as follows:

1. "Did the Civil Aeronautics Board err in refusing to require the surviving carrier, as a condition of the merger, to honor the agreement between Petitioner Union and the other constituent corporation in the merger?"

2. "Did the Civil Aeronautics Board err in holding [allegedly] that under the labor protective provisions the burden of proof will be on the employee rather than the carrier in any dispute as to whether a discharge is due to the merger?"

Since the first of these issues was not presented to the Board by petitioner on a petition for review of the examiner's decision, and the second was not presented to the examiner by the petitioner or to the Board by petitioner or anyone else, the Court may dispose of them through resolution of either of the following issues:

1. Whether the petitioner's failure to exhaust its administrative remedies precludes consideration by the court of the issues it presents?
2. Whether the Board abused its discretion in failing and refusing to impose the labor protective conditions now sought by petitioner, particularly where the principal condition sought would require determination of matters committed to the exclusive competence of the National Mediation Board?

COUNTERSTATEMENT OF THE CASE

This case arises out of the merger of Lake Central Airlines (Lake Central) into Allegheny Airlines (Allegheny) on July 1, 1968. This merger--like all mergers in the air transport industry--was subject to approval by the Civil Aeronautics Board (Board) under the provisions of Section 408 of the Federal Aviation Act of 1958 (Act) (49 U.S.C. 1378, infra, p. 40).

From the outset (Tr. 11), Allegheny expressed its willingness to accept the labor protective provisions which the Board adopted in the ^{1/} United-Capital Merger Case and which the examiner stated "have been the standard provisions used by the Board in a number of merger cases and have been developed over a considerable period of time" (Tr. 1273). At the same time Allegheny made it clear that because the overwhelming majority of employees in the merged operation would be Allegheny employees, rather than former Lake Central employees, and because the wages and working conditions at Allegheny were superior to those at Lake Central, the labor conditions existing at Allegheny would prevail in the merged operation (Tr. 11, 19-20, 43, 161-62). Specifically, Allegheny stated from the outset that after merger it would not recognize the outstanding labor agreements between Lake Central and three unions representing different groups of former Lake Central employees, namely, Air Line Employees Association (ALEA), Air Line Dispatchers Association (ALDA), and International Brotherhood of Teamsters (Teamsters) (Tr. 162, 238, 475). The petitioner, ALEA, represented customer service employees, reservation agents, and clerks at Lake Central. However, it only claimed to represent approximately one out of four of such employees in the merged unit, or 425 out of 1500 or 1600 employees in such class or craft, which was and is unrepresented at Allegheny (Tr. 91-92).

^{1/} 33 C.A.B. 307 (1961). This Court sustained the Board's order approving the merger. Northwest Airlines, Inc. v. Civil Aeronautics Board, 112 U.S. App. D.C. 384, 303 F.2d 395 (1962).

ALDA and ALEA objected to Allegheny's position and asked the examiner to impose a condition requiring Allegheny to assume the obligations of all outstanding collective bargaining agreements of Lake Central. ALEA also requested as a condition of the merger that its contract with Lake Central govern all employees of the surviving company in the class or craft it represented. The examiner found that there was no need for any further conditions to protect employees beyond those customarily imposed by the Board.^{2/} He noted further that any legal obligation arising from the ALEA contract could be enforced in the courts more appropriately than before the Board (Tr. 1271). Also, he viewed ALEA's request for representation as precluded by the decision in Brotherhood of Railway and Steamship Clerks v. United Air Lines, Inc., 325 F.2d 576 (C.A. 6, 1963), cert. dismissed as improvidently granted, 379 U.S. 26 (1964).

Several other proposals with respect to the standard labor protective provisions were made, the only one of any concern here being one submitted by both ALDA and the Teamsters that "in any dispute between the carrier and an employee as to whether a change in employment status is due to the merger, the carrier shall assume the burden of proof" (Tr. 1272). This and other proposals were rejected by the

^{2/} The examiner stated that "the unions have not demonstrated that the failure to require the requested condition will expose Lake Central's employees to any economic injury" (Tr. 1271). On the contrary, he found that Lake Central's employees would benefit from Allegheny's plan to extend its higher wage and salary rates to all of the merged company's employees (Tr. 1265).

3/
examiner.

The examiner's initial decision approving the merger was issued on April 26, 1968 (Tr. 1218). On May 21, 1968, ALDA filed a petition for discretionary review pursuant to §302.28 of the Board's Rules of Practice (14 C.F.R. 302.28, infra, p. 44) (Tr. 1290). ALEA did not join in ALDA's petition and filed no petition of its own. No other party petitioned for review.

In its petition for discretionary review ALDA pressed only the issue of its survival as bargaining agent for the class of Lake Central employees it represented and asked the Board to provide that the contract which it held with Lake Central would survive the merger (Tr. 1290-1298).

4/
No mention was made of the "burden of proof" issue
5/
which it had urged below and which had been denied. The airlines opposed the petition (Tr. 1299).

3/ "The labor protective provisions of the United-Capital Merger Case, which are found to be appropriate in the instant case, have been the standard provisions used by the Board in a number of merger cases and have been developed over a considerable period of time. The Board has determined that it will not change them absent a showing that the basic plan which they provide has not afforded reasonable protection to employees affected by a merger. No such showing has been made." (Tr. 1273).

4/ ALDA stated the issue as follows (Tr. 1294):

"The issue presented is that the Hearing Examiner committed error by recommending approval of the merger without proper labor protective provision and the citing [sic] that the Board should not further extend the labor protective provisions necessary in this merger."

5/ Petitioner states that ALDA's petition for discretionary review raised the "burden of proof" issue (Pet. Br.⁸⁻⁹⁻¹⁰). This is incorrect. It is not even mentioned either under "Issues Presented" or under "Argument," or elsewhere (Tr. 1294, 1295-97).

On June 24, 1968, the Board issued Order E-26968, declining review and adopting the examiner's initial decision as its own, identifying it as Order E-26967 (Tr. 1307). The license fee and all necessary steps required by the Board's economic regulations having been completed, the Board thereafter issued Order 68-7-1, July 1, 1968, combining the authority previously contained in the two separate certificates into one new certificate, and authorizing the merger as of the date of the order (Tr. 1382).
^{6/}

SUMMARY OF ARGUMENT

I

By electing not to ask for discretionary review of the examiner's initial decision, or even to raise the "burden of proof" issue in this case, ALEA failed to exhaust its administrative remedies. Since Section 1006(e) of the Act bars the court from considering an issue "unless such objection shall have been urged before the Board," the petition

^{6/} On July 19, 1968, the Teamsters, who, like ALEA, had an agreement with Lake Central covering a group of its employees prior to the merger, began an action in the United States District Court for the District of Columbia (Civil Action No. 1847-68) against Allegheny and the International Association of Machinists and Aerospace Workers, AFL-CIO (IAM), praying the Court to issue a declaratory judgment to the effect that it is a violation of the Railway Labor Act for Allegheny to recognize and negotiate exclusively with the IAM to the exclusion of the Teamsters until the National Mediation Board has resolved the pending representation proceedings. This complaint for declaratory judgment and injunctive relief was denied by orders dated September 9 and 26, 1968, which found that the matter was essentially a representation dispute over which the National Mediation Board has exclusive jurisdiction, and that the action was in fact a collateral attack on Board Orders E-26968 and 68-7-1 contrary to Section 1006 of the Act, which provides that the Courts of Appeals shall have exclusive jurisdiction to review orders of the Board. International Brotherhood of Teamsters v. Allegheny Airlines, Inc., 69 L.R.R.M. 2891, 69 L.R.R.M. 2893 (D.D.C. 1968).

for review in this case must be dismissed. Seaboard & Western Airlines, Inc. v. Civil Aeronautics Board, 87 U.S. App. D.C. 78, 183 F.2d 975 (1950). A party should be required to comply with the elementary principal of "exhaustion of administrative remedies," embodied in Section 1006(e) of the Act, unless extraordinary circumstances excuse the failure or neglect to present or urge an objection. No such circumstances are present here. The fact that another party raised one of the issues by petition for discretionary review by the Board, does not excuse petitioner since its failure to do so had the effect of misleading the Board. Accordingly, dismissal of ALEA's petition is required.

II

Although the Court has jurisdiction to hear this case, it has no jurisdiction to grant even the limited relief now being requested. The Act directs the Board to approve a merger in appropriate circumstances "upon such terms and conditions as it shall find to be just and reasonable" (Section 408(b), infra, p. 40). Petitioner does not even now contend that the Board abused its discretion in rejecting the conditions requested by petitioner and others. Under the circumstances, the exercise of discretion by the Board in specifying what labor protective conditions are "just and reasonable" should be affirmed.

Furthermore, although the central condition sought by ALEA, that Allegheny be required to honor ALEA's contract with Lake Central and recognize ALEA as the representatives of all employees of the surviving carrier in the class or craft, was rejected by the Board, it did not undertake to finally pass upon either the representation issue or upon

Allegheny's contractual obligation to ALEA. Rather, after considering the applicability of John Wiley & Sons v. Livingston, 376 U.S. 543 (1964) to the situation, it told the union that "its recourse is to the courts, not the Board, which is hardly the forum for deciding such an issue as well as any questions of representation" (Tr. 1271). Additionally, following its own decision in the United-Capital Merger Case, it concluded as the Sixth Circuit did in a factually indistinguishable situation, that the issue was one of representation resting within the exclusive jurisdiction of the National Mediation Board. Brotherhood of Railway and Steamship Clerks v. United Air Lines, Inc., 325 F.2d 576 (C.A. 6, 1963), cert. dismissed as improvidently granted, 379 U.S. 26 (1964).

In a review proceeding such as this the question is whether the Board abused its discretion in adopting only the labor protective conditions that it did; the legal questions with which ALEA wishes to embroil the Court are not of controlling significance. Not only is there no charge of an abuse of discretion by the Board but the conditions sought are plainly unreasonable and unnecessary. ALEA represented a majority of a class at Lake Central, but the Lake Central employees in the class constitute only one-quarter (1/4) of the employees in that class working for the merged carrier. There is no equity in less than 1/4 of the employees affiliated with ALEA speaking for all employees. On the other hand, the minority of former Lake Central employees have been treated equitably because they have all received higher wages and better working conditions as a result of the merger. To the extent that

ALEA simply seeks to enforce the terms of its contract its position is equally untenable. It would require the surviving carrier to have two sets of wages and working conditions in effect side by side and it would force the former Lake Central employees to forego the better wages and working conditions in effect at Allegheny. It is not an abuse of discretion to refuse to impose such unreasonable conditions, particularly since any representation or any damages to which the employees may be entitled are still available through the ordinary legal processes of the National Mediation Board and the courts.

Petitioner's contention that the Board erred in holding that under the labor protective conditions the burden of proof will be on the employee rather than the carriers in any dispute as to whether a discharge is due to the merger is simply a fiction. The Board did not so hold. Petitioner did not even raise the issue either before the examiner or before the Board. Another union asked the examiner to change the standard labor protective conditions to state this objective, but he refused. No appeal was taken to the Board. Thus, the Board has not been presented with the issue or passed on it in this case. The labor protective conditions themselves place no burden of proof on employees, place the burden of going forward initially on the merged company, and provide for the ultimate resolution of disputes by arbitration. (See Appendix A, infra, p. 39).

ARGUMENT

Introduction

The Allegheny-Lake Central merger is but the latest in a long series of mergers which have taken place in the air transportation industry. From the beginning the Board has taken a keen interest in the welfare of the employees who would be affected by a merger, and in accordance with Section 408(b) of the Act has approved such mergers only after imposing conditions which were designed to provide broad economic protection for the employees.

The Board first utilized labor protective provisions in the United-Western Acquisition Case, 11 C.A.B. 701 (1950). In that case and in the following North Atlantic Route Transfer Case, 12 C.A.B. 124 (1950), the Board adopted several features of the Burlington Formula, developed for surface transportation by the Interstate Commerce Commission, with certain modifications considered appropriate. In the Braniff-Mid-Continent Merger Case, 15 C.A.B. 708 (1952), the Board incorporated certain features of the Washington agreement of 1936, an agreement resulting from nationwide collective bargaining in the railroad industry, again with modifications considered appropriate. Thus, the Board's labor protective provisions have been selectively developed on a basis consisting of two formulas carefully worked out in the railroad industry. In the Delta-Chicago and Southern Merger Case, 16 C.A.B. 647 (1952), certain changes were made which have been retained in subsequent cases. Finally, in the Flying Tiger-Slick Merger Case, 18 C.A.B. 326 (1954), the Board made a further revision. The

formula thus carefully developed over a period of years is now referred to as the "standard" labor protective provisions and, since the United-Capital Merger Case, 33 C.A.B. 307 (1961), has been applied in every merger without additional modification.

The provisions cover a broad spectrum of economic issues and, in the opinion of the Board, embody sufficient protection for the affected employees. Thus, the formula: provides for the integration of seniority lists (§3); includes a displacement allowance so that "no employee . . . shall as a result of the merger be placed in a worse position with respect to compensation than he occupied immediately prior to the effective date of such merger" (§4); provides a dismissal allowance for employees whose jobs are terminated as a result of the merger at the rate of 60% of an employee's former rate of pay, extending over a period of up to five years following dismissal (§5) and offers employees the alternative of resigning at the time of the merger with a lump-sum separation allowance (§7); guarantees that no employee will be deprived of benefits attaching to his previous employment (§6); and provides protection against economic injury resulting from relocations caused by the merger, including compensation for moving and travel expenses (§8) and absorption by the company of any loss incurred through the sale of a home or the cancellation of a lease (§9). The Board's intent has been that any dispute arising under the provisions should be worked out between the employee or his representative and the carrier, and the Board has attempted to avoid becoming embroiled in such disputes. Accordingly, the formula also includes

provisions for arbitration when negotiations fail (§13, infra, p. 39). Having thus provided for the economic protection of the employees,^{7/} the Board has not attempted to decide every issue of contract or labor law. Rather, these issues have been left to the normal collective bargaining process between the employees, the unions and the carriers, and, ultimately to the courts and the National Medication Board.

As might be expected, over the years the unions have continued to ask for increased "protection", not infrequently of a procedural nature, similar to that here involved. The Board has repeatedly held, however, that in the absence of any showing that the economic interests of the employees were not provided adequate protection by the standard provisions, no changes, including those of a procedural rather than ^{8/} economic nature, would be made. In the present case the examiner

^{7/} The Board has not, of course, sought to give employees every possible protection. Recognizing the Congressional mandate favoring mergers not inconsistent with the public interest (see note 19, infra) the Board has attempted to strike a balance between protection of employees and the viability of a merger proposal, both of which may be achieved by the imposition of conditions which are "just and reasonable".

^{8/} See, e.g., Alaska-Cordova Merger Case, Order E-26083 (1967); Frontier-Central Merger Case, Order E-25626 (1967); Western-Pacific Northern Merger Case, Order E-25240 (1967).

refused to embroil the Board in a representation dispute as to which unions should represent the employees of the merged carrier and he also declined to modify the provisions with respect to the burden of proof in disputes arising under the conditions. He concluded that no showing had been made that the standard labor protective provisions would not in this case protect the affected employees and, accordingly, he declined to modify them. His conclusions were adopted by the Board and we subsequently show that the Board's decision cannot be construed as an abuse of its discretion in approving the merger "upon such terms and conditions as it [found] to be just and reasonable" (§408(b)).

Here petitioner seeks to persuade the Court that it should direct the Board to change its long-standing policy against involvement in contract and representation disputes. Petitioner grounds its argument on John Wiley & Sons v. Livingston, 376 U.S. 543 (1964) which holds that some aspects of a collective bargaining agreement may, in proper circumstances, survive a merger. That case is more fully dealt with elsewhere in this brief (infra, p. 30). Suffice it to say for the present that, if petitioner is correct in its belief that Wiley affords it a remedy, the Board's action here is not inconsistent with that remedy. Thus, if the ALEA-Lake Central labor contract is capable of enforcement, the Board has not altered the situation; and, as in Wiley, petitioner is free to apply directly to a court for vindication of its contract rights. Accordingly the Board's order must be affirmed.

Moreover, petitioner did not present the issues that it seeks to raise here to the Board, and, hence, failed to properly preserve those

issues for review. Accordingly, its petition for review should be dismissed because of its failure to exhaust its administrative remedies.

The Court may thus dispose of this case either on the ground that it lacks jurisdiction to pass on the issues raised by petitioner, or, alternatively, on the ground that the Board properly determined the issues presented to it on the merits. Since it is abundantly clear that the Board acted properly, under familiar principles, the Court may defer decision of the jurisdictional issue if it so desires.

Pan American World Airways, Inc. v. Civil Aeronautics Board, ____ U.S. App. D.C. ____, 392 F.2d 483 (1968). Although we believe that the Court may most easily dispose of this case on the merits, we have, in accordance with the usual practice, presented the jurisdictional arguments first.

I. ALEA's petition for review should be dismissed because ALEA failed to exhaust its administrative remedies.

It is well settled that orderly administrative processes require that the parties to a proceeding make their positions known to the decision-making body at an appropriate point in the proceedings. Accordingly, courts reviewing administrative decisions will not ordinarily rule on matters not first and timely presented to the administrative tribunal. As the Supreme Court has stated:

"We have recognized in more than a few decisions, and Congress has recognized in more than a few statutes, that orderly procedure and good administration require that objections to the proceedings of an administrative agency be made while it has opportunity for correction in order to raise issues reviewable by the courts Simple

fairness to those who are engaged in the tasks of administration, and to litigants, requires as a general rule that courts should not topple over administrative decisions unless the administrative body not only has erred but has erred against objection made at the time appropriate under its practice." United States v. Tucker Truck Lines, Inc., 344 U.S. 33, 36-37 (1952) (footnotes omitted).

Moreover, the same principle is expressed in the statute which governs the instant proceeding. Thus, Section 1006(e) of the Federal Aviation Act (infra, p.41) provides that no objection to an order of the Board shall be considered by the reviewing court "unless such objection shall have been urged before the Board . . . or if it was not so urged, unless there were reasonable grounds for failure to do so."^{9/}

^{9/} This Court has construed Section 1006(e) as precluding judicial review of matters not first presented to the Board for decision.

"The present petition asks review of the Board's order denying a temporary exemption. The point to which petitioner's brief and argument are directed is that the Board failed to make adequate findings. Petitioner did not urge this objection before the Board, despite the fact that petitioner asked the Board for a rehearing on other grounds. The objection therefore comes too late. The statute provides that 'No objection to an order of the Board shall be considered by the court unless such objection shall have been urged before the Board or, if it was not so urged, unless there were reasonable grounds for failure to do so.' No such grounds are shown. It follows that we could not modify or set aside the Board's order even if we regarded the objection now urged as valid." Seaboard & Western Airlines v. Civil Aeronautics Board, 87 U.S. App. D.C. 78, 183 F.2d 975 (1950) (citation omitted).

Accord, New England Air Express v. Civil Aeronautics Board, 90 U.S. App. D.C. 215, 194 F.2d 894 (1952); Island Airlines, Inc. v. Civil Aeronautics Board, 363 F.2d 120 (C.A. 9, 1966). See, also Federal Power Commission v. Colorado Interstate Gas Co., 348 U.S. 492, 498-501 (1955); Unemployment Compensation Commission of Alaska v. Aragon, 329 U.S. 143, 155 (1946); National Labor Relations Board v. District 50, United Mine Workers of America, 355 U.S. 453, 463-64 (1958).

The foregoing principles are fully applicable to decisions of the Civil Aeronautics Board under Reorganization Plan No. 3 of 1961 (75 Stat. 837, 49 U.S.C. 1324, infra, p. 43). We recognize that the literal language of the Reorganization Plan can be read as providing for direct judicial review of an examiner's decision when it becomes "final" either through denial of a petition for discretionary review or through the expiration of the time for filing petitions for review with the Board; and we further recognize that there is some legislative history which tends to support such a construction. ^{10/} We subsequently show that the requirement that administrative remedies be exhausted is not inconsistent with the literal language of the Reorganization Plan. Further, the implication of the literal language of a statute, in any event, need not be accepted where to do so would produce "an unreasonable result plainly at variance with the policy of the legislation as a whole."^{11/} The fact is that the purpose of the Reorganization Plan was not to change the rights of parties to judicial review but to rearrange the work of the

^{10/} "Specifically, basically, and fundamentally these plans deal with the right of trial examiners to make final decisions in routine cases, as the Board may direct in certain adjudicatory matters, giving the right to the applicants immediately to go into judicial review, but retaining the right in the Board . . . of discretionary review in those cases where they believe the matter is of such complexity that it ought to go to the Board, or it is of an unusual character, or it sets up some new precedent." 107 Cong. Rec. 10841 (June 20, 1961) (remarks of Congressman Fascell).

^{11/} Ozawa v. United States, 260 U.S. 178, 194 (1922). Accord, United States v. American Trucking Ass'ns, 310 U.S. 534, 543 (1940).

12/

agency so as to lighten the burden on the Board members. Thus, the Plan was not intended to overrule the judicial requirement that a party exhaust his administrative remedies before seeking judicial review of administrative action, nor was it intended to repeal Section 1006(e) of the Federal Aviation Act and Section 10(c) of the Administrative Procedure Act (now 5 U.S.C. 704, infra, p.42), which embody the exhaustion principle. Indeed, the House Committee specifically noted that the Plan "cannot be held to alter or modify the effect of any provisions of the Administrative Procedure Act. For example . . . section 10 governing judicial review . . . will still be applicable 13/ to actions taken under the plan".

Moreover, this court's jurisdiction to review the Board's order stems from §1006 of the Federal Aviation Act which, although conferring

12/ "The basic objectives of Reorganization Plan No. 3 of 1961 are clear. As explained in the President's transmittal message, they are (1) to 'relieve the Board members from the necessity of dealing with many matters of lesser importance and thus conserve their time for the consideration of major matters of policy and planning' while maintaining bipartisanship in the matter of determining which actions by subordinates should be given full review by the entire Board and (2) to provide flexibility and continuity to the assignment of specific individuals or groups within the Board to perform delegated functions." H.R. Rep. No. 510, 87th Cong., 1st Sess. 3 (1961).

13/ H.R. Rep. No. 510, 87th Cong., 1st Sess. 5 (1961). See also Hearings on the Reorganization Plans of 1961 Before the Senate Committee on Government Operations, 87th Cong., 1st Sess. 28 (1961); Hearings on the Reorganization Plans of 1961 Before a Subcommittee of the House Committee on Government Operations, 87th Cong., 1st Sess. 45 (1961).

the right of review, also precludes the consideration by the court of objections which were not previously presented to the Board "unless there were reasonable grounds for failure to do so." Consequently, under §1006 administrative remedies must be exhausted unless the court finds that there were "reasonable grounds" for failing to present an objection to the Board. The literal language of §1006 and the Reorganization Plan, when read together, form a harmonious whole. Thus, the clear intent of the Plan was to give legal effect to Board orders which either had been adopted by the Board through denial of a petition for review or which had become final because the reviewing jurisdiction of the Board was neither invoked nor exercised on the Board's own motion. Where the reviewing jurisdiction of the Board was not invoked, however, the Reorganization Plan would bring the examiner's decision within the ambit of 1006(a), but consideration of such decision by the Court would still be blocked "unless there were reasonable grounds" for failing to invoke the Board's reviewing jurisdiction. The situation is precisely parallel to that where a Board order properly brought before the court under 1006(a) is challenged on a ground not presented to the Board; in such case, although having jurisdiction under 1006(a), the court would be barred from considering the ground of challenge not presented to the Board "unless there were reasonable grounds for failure to do so." Thus read, there is no conflict between the Reorganization Plan and the principle embodied in Section 1006, that administrative remedies must be exhausted except in unusual circumstances. This construction gives scope to both provisions.

To the extent that §10(c) of the APA clarifies or supplements the jurisdiction conferred by §1006 the result is the same. Notwithstanding §10(c), the courts have continued to require that parties exhaust their administrative remedies before seeking redress in the courts. Thus, under §10(c) the decision of a subordinate official is to be final for purposes of judicial review only where it is to be immediately effective. Where, as here, the agency's rules provide for an appeal to higher agency authority (14 C.F.R. 302.28, infra, p. 44) and a stay of the effectiveness of the initial decision pending a decision on such appeal (14 C.F.R. 302.27(c), infra, p. 44), the ordinary procedures with respect to the exhaustion of administrative remedies continue to apply.

We think it clear, therefore, that the appropriate conclusion to be drawn from an analysis of Reorganization Plan No. 3, §1006(e) of the Federal Aviation Act and §10(c) of the APA is that parties are required to petition the Board for review of an initial decision before seeking review in the courts. Any other interpretation would produce incongruous results in that parties would be left free to by-pass the Board, proceeding directly to the busy courts of appeals for the resolution of issues otherwise committed in the first instance to the agency's

^{14/} See Federal Power Commission v. Colorado Interstate Gas Co., 348 U.S. 492, 498-501 (1955) for a good discussion of the continued applicability of the exhaustion principle after the passage of the APA. See also the following cases in which the courts have required exhaustion: National Labor Relations Board v. District 50, United Mine Workers of America, 355 U.S. 453, 463-64 (1958); Coy v. Folsom, 228 F.2d 276 (C.A. 3, 1955); Batista v. Nicolls, 213 F.2d 20 (C.A. 1, 1954); Harris v. Ribicoff, 200 F. Supp. 318 (N.D. W. Va. 1961).

discretion. Hence, the division of labor between court and agency which is essential to the smooth functioning of the administrative process would be destroyed. Cf. Ritz v. Civil Aeronautics Board, 126 U.S. App. D.C. 6, 373 F.2d 666 (1967).

The application of the principles of exhaustion of administrative remedies in this case requires a dismissal of the petition for review. After the proposed merger of Allegheny and Lake Central was docketed, ALEA and four other labor unions sought and were granted leave to intervene as parties (Tr. 71, 76, 79, 88, 99, 133). Throughout the administrative proceedings, the attention of ALEA and all other parties was directed to the United-Capital labor protective conditions and the opportunity by evidence and argument to seek changes therein (Tr. 120, 129). Such issues were fully litigated. ALEA, however, simply took the argumentative position, contrary to that of Allegheny, that the Board's approval of the merger should be conditioned on acceptance by the merged carrier of ALEA and its contract with Lake Central as controlling the relations between Allegheny and all employees in the class or craft of the merged carrier (Tr. 497).

Thereafter the examiner issued his initial decision. With respect to the controversy between ALEA and Allegheny, he rejected ALEA's position and adopted the United-Capital labor protective conditions. Although overruled by the examiner on the only point it had raised, ALEA took no exception to the examiner's action and did not exercise its right to request discretionary review by the Board (14 C.F.R. 302.28, infra, p. 44). ALEA thus indicated its acceptance of the examiner's

action, at least for the purposes of the litigation. In contrast, the dispatchers union (ALDA), which had been advocating a similar condition, petitioned the Board for discretionary review of the initial decision, specifically requesting the imposition of the "recognition" condition (Tr. 1290). In answer, Allegheny noted that except for ALDA "all parties to this proceeding including the labor union intervenors, have accepted the Examiner's findings on all issues, including the imposition of the United-Capital labor protective provisions" (Tr. 1301). Accordingly, Allegheny argued, the Board should accept the examiner's decision and dismiss the petition for review. ALEA remained silent. None of the other unions controverted this argument and the Board apparently accepted it. Having effectively conveyed to the Board its approval of the examiner's decision, ALEA now comes before the Court advocating a contrary position.

We are aware of the line of cases holding that one party's objection before an agency is sufficient to preserve a point for judicial review on the petition of any party having a substantial interest.

15/ For the first time, ALEA now seeks arbitration of the question of the extent to which the Lake Central labor agreement survived the merger. Since it failed to raise that issue before the Board, it cannot properly raise it here. In any event, we show below (pp. 27-36) that its contention is without merit.

16/ Hennesey v. Securities and Exchange Commission, 285 F.2d 511 (C.A. 3, 1961); City of Pittsburgh v. Federal Power Commission, 99 U.S. App. D.C. 113, 237 F.2d 741 (1956); Wilson and Co. v. United States, 335 F.2d 788 (C.A. 7, 1964).

However, the principle is not applicable in the circumstances of the present case. In City of Pittsburgh and Wilson the points preserved were of a strictly "legal" nature (e.g., exclusion of evidence, right to cross-examination, notice) and Hennesey was decided on a similar assumption (285 F.2d at 515). Here, however, we deal with an issue involving the application of administrative "expertise" to the determination of a policy question. (See p.10 ff., supra). On the petition for Board review of the initial decision, the question before the Board was whether the standard labor protective provisions should be modified to properly protect the employees of the merged carrier. The resolution of that question required the Board to draw upon its experience in developing those provisions and to consider the arguments of the parties, particularly the labor unions who represented the employees to be protected thereby. As Allegheny pointed out, only one union objected to the Board's adoption of the initial decision--the other four presumably preferring its acceptance to further litigation. Even after Allegheny drew that inference, ALEA did not speak out. The Board thus exercised its judgment on a record which failed to express ALEA's opposition to the examiner's decision. ALEA should not now be heard to object.

Furthermore, the second issue ALEA seeks to raise here, namely, that the Board should have modified the labor protective provisions so as to impose on Allegheny the burden of proof in any dispute as to whether the discharge of an employee is due to the merger, must unquestionably be dismissed. Not only was this issue not presented to

17/

either the examiner or the Board by ALEA,^{17/} but the question was not presented to the Board by any party, including ALDA (ALEA's undocumented assertion to the contrary notwithstanding, see note 5, supra).^{18/} As a result the Court does not have the benefit of the Board's views nor any Board ruling to review.

In the context of this case, the Board's insistence that ALEA's petition for review should be dismissed because ALEA failed to exhaust its administrative remedies is "not merely a matter of bureaucratic maneuvering over the division of labor. It is of the essence of rational administrative adjudication that critical determinations of this kind be made initially at the administrative level, where the special factors of agency experience and expertise--which are the warrant for administrative adjudication in the first place--can be brought to bear." Ritz v. Civil Aeronautics Board, 126 U.S. App. D.C. 6, 373 F.2d 666, 670 (1967). Accordingly, the Board submits that ALEA's petition for judicial review should be dismissed for its failure to exhaust its administrative remedies.

17/ At no time during the course of the administrative proceedings did ALEA itself raise the "burden of proof" issue. Indeed, ALEA's written testimony stated that "the 'standard' labor protective provisions in general safeguard affected employees against loss of income" and implied that ALEA's sole objection to the merger was founded on the representation issue (Tr. 494).

18/ The only parties to raise the issue at any time during the entire proceeding, the Teamsters and ALDA, did so only in their exhibits (Tr. 148 and 485-86). No one developed the point in testimony nor did anyone bring the issue into focus on cross-examination. No party briefed the issue to the examiner. No party sought Board review of his decision on "burden of proof."

II. There is no merit in petitioner's substantive contentions, even if it were assumed arguendo that they were justiciable.

In substance petitioner contends that, as a matter of law, the Board was required to establish two additional conditions to its approval of the merger of Lake Central into Allegheny. These conditions, which the examiner and the Board failed or refused to impose, would have required Allegheny (1) to honor the ALEA/Lake Central agreement (Pet. Br. ¹⁰22), and (2) to assume the burden of proof as to the cause of any subsequent change in employment directed by Allegheny (Pet. Br. ²²25). The acceptance of such contentions would rewrite the plain meaning of Section 408(b) of the Federal Aviation Act and thus defeat the Congressional purpose to leave to an expert Board the determination of what conditions should reasonably be imposed in connection with any airline merger.

Section 408(a)(1) of the Act would have made it unlawful for Lake Central and Allegheny to merge without the approval of the Board. Section 408(b) required these carriers to present an application to the Board and required the Board to provide for public hearing on the application. The statute then goes on to say "Unless . . . the Board finds that the . . . merger . . . will not be consistent with the public interest . . . it shall by order approve such . . . merger . . . upon such terms and conditions as it shall find to be just and reasonable and ^{19/}with such modifications as it may prescribe . . ." It is perfectly

^{19/} "The negative in which this provision is cast is to be noted." Northwest Airlines Inc. v. Civil Aeronautics Board, supra, 303 F.2d at 400. See also Air Line Pilots Ass'n Int'l v. Civil Aeronautics Board, 124 U.S. App. D.C. 22, 360 F.2d 837 (1966).

plain from the foregoing that the Board is granted broad discretion to determine what "just and reasonable" conditions shall be imposed upon the merger. Accordingly, the Board's decision with respect to the conditions it imposed is reviewable only to the extent necessary to determine whether the Board abused that discretion by imposing conditions lacking a basis in the record or adequate explanation of the reasons therefor.

"The function of the reviewing court is . . . restricted. It is limited to ascertaining whether there is warrant in the law and the facts for what the Commission has done. Unless in some specific respect there has been prejudicial departure from requirements of the law or abuse of the Commission's discretion, the reviewing court is without authority to intervene. It cannot substitute its own view concerning what should be done . . . for the Commission's judgment upon matters committed to its determination, if that has support in the record and the applicable law." United States v. Pierce Auto Freight Lines, Inc., 327 U.S. 515, 536 (1946). 20/

We submit that in the present case there has been no showing that the Board abused its discretion and, indeed, petitioner does not so argue. Rather, ALEA insists that as a matter of law the Board was required to impose those conditions which it here seeks. In fact, however, the question of what conditions should be imposed on the Board's approval of an airline merger has been entrusted to the discretion of the Board rather than the courts and there is nothing whatsoever in this record which would disclose that the Board's long established policy, followed in this case, has not promoted peaceful relations between management and

20/ Accord, American Airlines, Inc. v. Civil Aeronautics Board, 89 U.S. App. D.C. 365, 192 F.2d 417, 420 (1951); United Air Lines, Inc. v. Civil Aeronautics Board, 81 U.S. App. D.C. 89, 155 F.2d 169 (1946); United Air Lines, Inc. v. Civil Aeronautics Board, 371 F.2d 221 (C.A. 7, 1967).

labor. Something more than an offhand statement that petitioner would like some other result is required to establish an abuse of discretion on the part of the Board. Chorbajian v. Civil Aeronautics Board, 229 F.2d 81 (C.A. 2, 1956). As the Supreme Court has noted: "The judicial function is exhausted when there is found to be a rational basis for the conclusions approved by the administrative body." Rochester Telephone Corp. v. United States, 307 U.S. 125, 146 (1939), and see the cases collected and the conclusions expressed by this court in Deutsch v. United States Atomic Energy Commission, ___ U.S. App. D.C. ___, 401 F.2d 404, 407 (1968).

Moreover, the question of what rights may survive even if the collective bargaining agreement does not, and how they may be enforced, is one cognizable by the courts. Cf. Regents of the University of Georgia v. Carroll, 338 U.S. 586 (1950); John Wiley & Sons v. Livingston, 376 U.S. 543 (1964). This court has rejected the view that "the C.A.B. must itself resolve all contract disputes which arise between air carriers and their employees" (Air Line Pilots Ass'n Int'l v. Civil Aeronautics Board, 124 U.S. App. D.C. 22, 360 F.2d 837, 840 (1966)), or that the Board is "expected to act as a general labor board for the airline industry" (Flight Engineer Int'l Ass'n v. Civil Aeronautics Board, 118 U.S. App. D.C. 112, 332 F.2d 312, 315 (1964)). Here, the examiner found no

²¹/ This decision, and many others in the related area of whether the Board should entertain a complaint of violation of the Act or the requirements thereunder, make clear that the Board's discretionary authority is only subject to review for an abuse of that discretion. Flying Tiger Line, Inc. v. Civil Aeronautics Board, 121 U.S. App. D.C. 332, 350 F.2d 462 (1965); Transcontinental Bus System, Inc. v. Civil Aeronautics Board, 383 F.2d 466 (C.A. 5, 1967), cert. denied 390 U.S. (footnote continued)

occasion to pass on the question of whether rights survived under the ALEA agreement and how they were to be enforced (Tr. 1269), any more than the Board did in the United-Capital Merger Case.^{22/} The substantive question therefore is not whether an agreement must be honored but whether, and to what extent, the Board finds that it would be "just and reasonable" to prescribe conditions preserving or protecting some or all of the rights that might otherwise accrue under the agreement in the absence of a merger. The examiner found no record basis for adopting any such conditions beyond those in the standard labor protective conditions (Tr. 1273).

A. The Board's refusal to impose a condition requiring Allegheny to honor the ALEA/Lake Central agreement was not an abuse of discretion.

ALEA argues that the Board erred "in refusing to require the surviving carrier, as a condition to the merger, to honor the agreement,

920 (1968); Nebraska Department of Aeronautics v. Civil Aeronautics Board, 298 F.2d 286 (C.A. 8, 1962); Pan American-Grace Airways, Inc. v. Civil Aeronautics Board, 85 U.S. App. D.C. 297, 178 F.2d 34 (1949).

^{22/} 33 C.A.B. 307 at 330-31. It may be noted that in neither case did the examiner or the Board purport to "abrogate" any rights of employees under pre-existing contracts. When the United-Capital Merger Case came before this Court for review (Northwest Airlines, Inc. v. C.A.B., supra) one of the petitioners was the Brotherhood of Railway Clerks (ERC) (No. 16,360). In answer to ERC's motion for stay, the Board pointed out that it had not conditioned the United-Capital merger on United's assumption of the BRC agreement with Capital. It went on to say: "Neither did it [the Board] purport to pass on the issues of whether United would be justified, as a matter of contract or labor law, in ignoring the agreement." ERC then dismissed its petition for review in this Court and sued for a declaratory judgment on its contract in the District Court. That resulted in the decision in ERC v. United Airlines, supra, in which this history is recited briefly (325 F.2d 445, 577). Our position here is the same as that in the United-Capital Merger Case.

between petitioner and the other constituent corporation in the merger." The examiner refused to impose a condition determining the representation rights of the several unions involved, however, because no showing had been made that the standard labor protective conditions would not adequately protect the interests of the employees.

"The labor protective provisions of the United-Capital Merger Case, which are found to be appropriate in the instant case, have been the standard provisions used by the Board in a number of merger cases and have been developed over a considerable period of time. The Board has determined that it will not change them absent a showing that the basic plan which they provide has not afforded reasonable protection to employees affected by a merger. No such showing has been made" (Tr. 1273).

Moreover, the examiner sought to avoid embroiling the Board in a labor controversy between Allegheny and ALEA. Rather, following the Board's decision in the United-Capital Merger Case, 33 C.A.B. 307 (1961) he observed that whether "the dispute concerns a contractual obligation or representation, so far as the Board is concerned, the result should be the same. The Board does not normally inject itself into contract disputes between a merger applicant and third persons, including unions representing the employees of a predecessor company, and no persuasive reason has been offered for its doing so here" (Tr. 1269).

Nevertheless, the examiner considered the arguments advanced by the parties with respect to the post-merger applicability of the Lake Central labor contracts. The carriers maintained that the controversy was governed by the decision in Brotherhood of Railway and Steamship Clerks v. United Air Lines, Inc., 325 F.2d 576 (C.A. 6, 1963), cert. dismissed as improvidently granted, 379 U.S. 26 (1964) which, they

argued, made clear that the dispute was a representation controversy
as to which neither the courts nor the C.A.B. had jurisdiction. The
BRC case held, on similar facts arising out of the United-Capital Merger
Case, 33 C.A.B. 307 (1961), that the National Mediation Board had ex-
clusive jurisdiction to resolve the question.^{23/} The unions argued, on
the other hand, that what is here involved is a simple contract question
as to whether Lake Central should be able to escape its contract obli-
gations by merging with another airline. They insisted that that issue
was resolved in their favor by the decision in John Wiley and Sons v.
Livingston, 376 U.S. 543 (1964).

The examiner concluded that the BRC decision more nearly governed
the instant controversy. In the first place, he thought it clear that
what is here involved is in fact a representation dispute, noting that
"the Teamsters leave no doubt as to the nature of the dispute by seeking
an order in this case which would preserve the representation rights of
the unions pending further representation proceedings" (Tr. 1269). More-
over, he found that the facts in the present dispute were indistinguishable
from those before the court in the BRC case (Tr. 1267-68). Accordingly,

^{23/} Switchmen's Union of North America v. National Mediation Board,
320 U.S. 297 (1943); General Committee v. Missouri-Kansas-Texas R.R.,
320 U.S. 323 (1943); General Committee v. Southern Pacific Co., 320 U.S.
338 (1943).

^{24/} The BRC decision has since been followed in International Brotherhood of Teamsters v. Allegheny Airlines, Inc., 69 L.R.R.M. 2891, 69 L.R.R.M.
2893 (D.D.C. 1968) (see note 6, supra) and in Turner v. Louisville & Nash-
vile R.R., 67 L.R.R.M. 2617 (W.D. Ky. 1968).

it was his belief that exclusive jurisdiction of the matter was vested in the National Mediation Board and that the C.A.B. should take no action which would involve it in a labor controversy beyond its jurisdiction. The Board's decision cut off no representation rights, however, and, as the examiner observed, "the dispute is a matter to be worked out between [the unions and Allegheny]" (Tr. 1271).

The examiner also considered the applicability of the Wiley decision to the present case but found it to be factually distinguishable (Tr. 1269-71). While it involved a merger in which a smaller group of employees represented by a union holding a collective bargaining agreement with a company absorbed in the merger were integrated into a larger and unrepresented group who performed similar work at the surviving company, as in this case, the factors critical to the Supreme Court's decision permitting only the arbitration provision of the labor agreement to survive are missing here. Thus, in the first place, Wiley was decided under the Labor Management Relations Act whereas this case arises under the Railway Labor Act. The differences in the applicable statutory provisions compel a different result.^{25/} Moreover, in this case we deal with

^{25/} The applicable provisions of the Labor Management Relations Act do not bar a minority union. The Wiley court noted that the "fact that the Union does not represent a majority of an appropriate bargaining unit in Wiley does not prevent it from representing those employees who are covered by the agreement which is in dispute and out of which Wiley's duty to arbitrate arises." John Wiley and Sons v. Livingston, supra, 376 U.S. at 551. In contrast, such minority representation is not possible under the Railway Labor Act. "Representation under this Act is on the basis of craft or class, is carrierwide, and the majority of the craft or class determines who shall represent them. There is no provision made in the Act for partial or minority representation." Representation of Employees of KLM Royal Dutch Airlines, 3 NMB Determination of Craft or Class 1, 4 (1953); cf. Railway Clerks v. Non-Contract Employees, 380 U.S. 650, 659 (1965).

a merger in a regulated industry which requires approval of the Board after participation in public proceedings by the unions, and then only upon compliance with a host of labor protective conditions imposed by the Board. In Wiley, the Supreme Court permitted the arbitration provision alone to survive in preference to a test of economic strength between the small, unconsulted union and the surviving company. Thus, Wiley compels no action here.

In any event, as the examiner observed, the purposes of the Wiley decision are served without the imposition of the condition which the unions here requested. As he pointed out, "it is not for the Board to decide whether Wiley requires enforcement of the Lake Central labor agreements. Since [ALEA] argues that the issue is one of contract, its recourse is to the courts, not the Board, which is hardly the forum for deciding such an issue as well as any questions of representation" (Tr. 1271). If the dispute is truly contractual, ALEA has not been harmed by the Board's decision. Rather, it is left to its remedies at law just as is any other party which had contractual relations with Lake Central. Since the Board took no action to "abrogate" petitioner's agreement with Lake Central, and since by its terms that agreement is applicable to a "successor", petitioner would still seem to have whatever rights it had under its agreement.

This court is not required to determine whether this case is more nearly similar to BRC or to Wiley, however, or whether one of those two cases is controlling, since the correctness of the Board's decision

does not hinge on a resolution of those issues. As noted previously (p. 10, supra), the Board has developed its standard labor protective conditions over a long period of time and believes that they provide reasonable protection to the employees affected by a merger. In the instant proceeding, "the unions have not demonstrated that the failure to require the requested condition will expose Lake Central's employees to any economic injury, nor have they offered any other persuasive reason why the Board, as a matter of policy, should grant the relief requested" (Tr. 1271). Absent such a showing, any argument that the Board abused its discretion in imposing its standard labor protective provisions, and no others, must fail.

Moreover, the positions ALEA has taken throughout this proceeding in seeking this condition have been far from reasonable. It initially proposed that it should be declared the representative of all of the merged carrier's employees in the craft or class which it represented at Lake Central, although it represented only 425 such employees whereas Allegheny had an additional 1100 or 1200 unrepresented employees in the

26/ If such determinations were undertaken, however, an additional point should be considered in gauging the value and applicability of Wiley to this case: The Supreme Court handed down its decision in Wiley on March 30, 1964, and subsequently dismissed its writ of certiorari as improvidently granted in the BRC case on November 9, 1964. When the Supreme Court withdrew its grant of certiorari in BRC after hearing oral argument, it knew what it had done in Wiley and it knew what it was being asked to do in BRC. Notwithstanding the Court's decision in Wiley, it elected to allow the determination of the Sixth Circuit in BRC to stand. It can scarcely be argued, therefore, that Wiley enunciated a national labor policy which requires this Court to reverse the Board's decision. BRC, on the other hand, requires dismissal of ALEA's petition for review with respect to its first issue.

class or craft (Tr. 91-93). Plainly, there would be no merit in a condition which had the effect of imposing the will of one-fourth of the employees upon all, when three-fourths of the employees had not been given an opportunity to express their views. It was not an abuse of discretion for the Board to refuse to impose such a condition and apparently ALEA now recognizes that fact since it no longer urges that position on the court.

The more limited position, primarily espoused by ALDA before the examiner, was at the very least that a condition should be imposed upon Allegheny requiring it to recognize the contract for former Lake Central employees. The unreasonableness of this position was plainly established at the hearing when it was disclosed that the wages and fringe benefits of the Allegheny employees were superior to those of the Lake Central employees and that the imposition of such a condition would have required Allegheny to pay the former Lake Central employees less than their co-workers who had always been employed by Allegheny (Tr. 161). Moreover, with respect to fringe benefits, pension plans, and the like, the merger agreement itself provided that any benefits previously enjoyed by Lake Central employees would be continued or replaced by benefits of at least equal value in the merged company (Tr. 19-20). Thus, any condition requiring Allegheny to honor the ALEA/Lake Central agreement would have been highly detrimental to the former Lake Central employees themselves. However, neither the examiner nor the Board took any action to terminate ALEA's right to represent the individual employees which ALEA formerly represented

when they were in the employ of Lake Central. Nor did it foreclose the employees or ALEA from enforcing any private rights they may have had.

The final position taken by petitioner before this court, based on the Wiley case, that it should require the Board to impose a condition on Allegheny providing for the arbitration of the applicability of the ALEA/Lake Central agreement to the present situation is equally untenable (Pet. Br. ¹⁰⁻²¹ ~~12-24~~, particularly page ¹¹ ~~13~~, note ⁸ 6). Neither ALEA nor any other union suggested to the examiner or to the Board that Allegheny should be required to arbitrate the extent to which the Lake Central labor contracts would survive the merger. Although the Supreme Court compelled arbitration in the Wiley case, it did "not rule out the possibility that a union might abandon its right to arbitration by failing to make its claims known" (376 U.S. at 551). We think it clear that since ALEA did not request arbitration during the course of the proceedings before the Board, it has abandoned its claim thereto. In any event, as the examiner pointed out in his initial decision, the situation here present, where the merger is subject to the approval of the Civil Aero-nautics Board, is quite different from that presented in the Wiley case. The function of furthering the national labor policy by implementing an arbitration provision in the Wiley agreement is simply not called for in the present situation. Not only is there no arbitration provision in the ^{27/} agreement here, as in Wiley, but the Board's own order makes adequate

^{27/} The agreement itself is not in the record. ALEA's petition for intervention describes the agreement as containing the normal provision for the creation of "adjustment boards" (Tr. 91), and in fact it contains (footnote continued)

provision for arbitration procedures concerning the labor protective provisions imposed by the Board. (See p. 39, infra). The Board did not leave disputed issues to a contest of economic strength between the union representing the employees of the non-surviving company and the surviving company, as in Wiley. Rather, we are presented here with a situation where the employees of Lake Central represented by ALEA are receiving better wages and working conditions than before, protection against adverse effects of the merger as embodied in the labor protective conditions imposed by the Board, a specific provision in those labor protective conditions requiring all proposed changes and working conditions resulting from the merger to be presented, discussed, and in the event of disagreement, ultimately determined by arbitration. The national labor policies sought to be protected by the Wiley case or expounded in the Railway Labor Act have been fully recognized by the Board's order in this case. Moreover, the Board has specifically retained jurisdiction to change the labor protective conditions "as the circumstances may require" (Tr. 1274). Under the circumstances, no further recognition of the contract by the Board could reasonably be

such a provision. The "adjustment boards" referred to are provided for in Section 204 of the Railway Labor Act (45 U.S.C. 184) which establishes a requirement for the arbitration of disputes with respect to the meaning or application of an agreement. Since the Board took no action to "abrogate" petitioner's agreement with Lake Central, and by its terms that agreement is applicable to a "successor", and cannot be terminated by law unilaterally (45 U.S.C. 156), petitioner would still seem to have whatever rights it had under its agreement, including the right to arbitration it seeks so assiduously here. (Cf. Pet. Br. 23-24).

expected. Whether any provisions of the ALEA agreement should be enforced as ancillary protection to the employees is a matter properly left by the Board for determination by the courts.

Accordingly, ALEA has failed to demonstrate that the Board abused its discretion in declining to condition its approval of the merger on Allegheny's recognition of the ALEA/Lake Central contract and the Board's order should be affirmed with respect to this issue.

B. The Board's failure to include a provision in the labor protective conditions specifically requiring the employer to shoulder the burden of proof on the cause of any change in employment was not an abuse of discretion.

The labor protective conditions imposed by the Board in the United-Capital Merger Case, and in this case, do not place the burden of proof as to the cause of a change in employment upon the employee. To the contrary, Section 11 of the conditions (infra, p. 39) requires the merging companies to indicate all proposed changes in employment resulting from the merger. It gives employees and their representatives an opportunity to discuss and negotiate with respect to such changes and in the event that agreement cannot be reached between the surviving company and the employees and their representatives, provision is made for settling the dispute or controversy by arbitration (Section 13, infra, p. 39). Nothing in these provisions places the burden of proof on the employees, as such. In fact the burden of going forward rests initially on the merged company. See note 29, infra.

In connection with this requested condition it may again be noted first that ALEA never mentioned the matter in connection with its participation in the proceeding before the Board, and second, that although ALDA

initially requested such a condition, it did not reiterate the contention in its petition for discretionary review of the examiner's decision rejecting the addition of such a condition to the labor protective conditions. Neither of the carriers presented any evidence whatsoever relating to the need for such a provision. As the matter reached the Board, therefore, an issue once raised at the beginning of the proceeding had not been the subject of any proof, and the examiner's rejection of it had not been the subject of any request for review. In this state of the record, petitioner now declares that it
^{28/}
is an error of law for the Board to have rejected the condition. As noted above, the reasonable conditions to be imposed on a merger rest within the sound discretion of the Board. An abuse of discretion by the failure to include such provision cannot possibly be discerned from anything in this record, and significantly, petitioner has pointed
^{29/}
to nothing.

28/ The Board has consistently refused to modify its labor protective provisions with respect to the so-called "burden of proof" issue in the absence of any showing that the employees of merged carriers have not been afforded adequate protection under the existing conditions. See Alaska-Cordova Merger Case, Order E-26083 (1967); Frontier-Central Merger Case, Order E-25626 (1967); Western-Pacific Northern Merger Case, Order E-25240 (1967).

29/ If the grounds for an action adversely affecting an employee are most accessible to the employer and, therefore, as a matter of law, should in all fairness be supplied by the employer, as petitioner argues (Pet. Br.²²⁻²³), that situation will still prevail either in the arbitration proceeding provided for in the labor protective conditions established by the Board, or in the courts.

CONCLUSION

For the foregoing reasons, the Court should dismiss the petition for review for lack of jurisdiction, or, alternatively, affirm the order of the Board.

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January, 1969

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APPENDIX A

Relevant provisions of the standard labor protective provisions,
United-Capital Merger Case, 33 C.A.B. 307, 346-47 (1961):

* * *

"Section 11. United and Capital shall jointly or severally give at least 45 days written notice containing a full and adequate statement of the proposed changes to be effected by the merger, including an estimate of the number of employees of each class, craft, or field of endeavor affected by the intended changes. Such notice shall be posted on bulletin boards or other conspicuous places convenient to the employees of said carriers, and a copy of the notice shall be sent by registered mail to all authorized representatives of any of the employees of both carriers.

"If requested in writing by any employee or employees of either carrier or the authorized representative of such employee or employees, the date and place of a meeting between said employees or their representatives and the representatives of the carriers to settle problems of the rearrangement of such employees arising out of and because of the merger shall be agreed upon within 10 days after such request is received by the carrier. The meeting shall commence within 30 days from the date the request is received by the carrier.

"In the event of a failure to agree upon a settlement of a problem or of problems presented at the meeting, the unsettled problems may be submitted by either party for adjustment in accordance with section 13.

* * *

"Section 13. In the event that any dispute or controversy (except as to matters arising under sec. 9) arises with respect to the protection provided herein, which cannot be settled by the carrier and the employee, or his authorized representative, within 30 days after the controversy arises, it may be referred, by either party, to an arbitration committee, for consideration and determination, the formation of which committee, its duties, procedure, expenses, etc., shall be agreed upon by the carriers and the employees, or the duly authorized representatives of the employees."

APPENDIX B

Relevant provisions of the Federal Aviation Act of 1958, 72 Stat. 731, 49 U.S.C. 1301 et seq.:

TITLE IV - AIR CARRIER ECONOMIC REGULATION

* * * * *

CONSOLIDATION, MERGER, AND ACQUISITION OF CONTROL

Acts Prohibited

Sec. 408. [72 Stat. 767, as amended by 74 Stat. 901, 49 U.S.C. 1378]

(a) It shall be unlawful unless approved by order of the Board as provided in this section --

(1) For two or more air carriers, or for any air carrier and any other common carrier or any person engaged in any other phase of aeronautics, to consolidate or merge their properties, or any part thereof, into one person for the ownership, management, or operation of the properties theretofore in separate ownerships;

* * * * *

Power of Board

(b) Any person seeking approval of a consolidation, merger, purchase, lease, operating contract, or acquisition of control, specified in subsection (a) of this section, shall present an application to the Board, and thereupon the Board shall notify the persons involved in the consolidation, merger, purchase, lease, operating contract, or acquisition of control, and other persons known to have a substantial interest in the proceeding, of the time and place of a public hearing. Unless, after such hearing, the Board finds that the consolidation, merger, purchase, lease, operating contract, or acquisition of control will not be consistent with the public interest or that the conditions of this section will not be fulfilled, it shall by order approve such consolidation, merger, purchase, lease, operating contract, or acquisition of control, upon such terms and conditions as it shall find to be just and reasonable and with such modifications as it may prescribe: * * *

* * * * *

TITLE X - PROCEDURE

* * * * *

JUDICIAL REVIEW OF ORDERS

Orders of Board and Administrator subject to Review

Sec. 1006. [72 Stat. 795, as amended by 74 Stat. 255, 75 Stat. 497, 49 U.S.C. 1486] (a) Any order, affirmative or negative, issued by the Board or Administrator under this Act, except any order in respect of any foreign air carrier subject to the approval of the President as provided in section 801 of this Act, shall be subject to review by the courts of appeals of the United States or the United States Court of Appeals for the District of Columbia upon petition, filed within sixty days after the entry of such order, by any person disclosing a substantial interest in such order. After the expiration of said sixty days a petition may be filed only by leave of court upon a showing of reasonable grounds for failure to file the petition theretofore.

* * * * *

Findings of Fact Conclusive

(e) The findings of facts by the Board or Administrator, if supported by substantial evidence, shall be conclusive. No objection to an order of the Board or Administrator shall be considered by the court unless such objection shall have been urged before the Board or Administrator or, if it was not so urged, unless there were reasonable grounds for failure to do so.

* * * * *

Relevant provision of the Administrative Procedure Act, 5 U.S.C. 551 et seq.:

CHAPTER 7 - JUDICIAL REVIEW

* * * * *

Actions Reviewable

Sec. 10(c) [5 U.S.C. 704] Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review. A preliminary, procedural, or intermediate agency action or ruling not directly reviewable is subject to review on the review of the final agency action. Except as otherwise expressly required by statute, agency action otherwise final is final for the purposes of this section whether or not there has been presented or determined an application for a declaratory order, for any form of reconsideration, or, unless the agency otherwise requires by rule and provides that the action meanwhile is inoperative, for an appeal to superior agency authority.

* * * * *

Relevant provisions of the Railway Labor Act, 44 Stat. 577, as amended.
45 U.S.C. 151 et seq.:

TITLE II

* * * * *

Sec. 202. [Added by 49 Stat. 1189, 45 U.S.C. 182] The duties, requirements, penalties, benefits, and privileges prescribed and established by the provisions of title I of this Act, except section 3 thereof, shall apply to said carriers by air and their employees in the same manner and to the same extent as though such carriers and their employees were specifically included within the definition of "carrier" and "employee", respectively in section 1 thereof.

* * * * *

Sec. 204. [Added by 49 Stat. 1189, 45 U.S.C. 184] The disputes between an employee or group of employees and a carrier or carriers by air growing out of grievances, or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions, including cases pending and unadjusted on the date of approval of this Act before the National Labor Relations Board, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to an appropriate adjustment board, as hereinafter provide, with a full statement of the facts and supporting data bearing upon the disputes.

It shall be the duty of every carrier and of its employees, acting through their representatives, selected in accordance with the provisions of this title, to establish a board of adjustment of jurisdiction not exceeding the jurisdiction which may be lawfully exercised by system, group, or regional boards of adjustment, under the authority of section 3, Title I, of this Act.

Such boards of adjustment may be established by agreement between employees and carriers either on any individual carrier, or system, or group of carriers by air and any class or classes of its or their employees; or pending the establishment of a permanent National Board of Adjustment as hereinafter provided. Nothing in this Act shall prevent said carriers by air, or any class or classes of their employees, both acting through their representatives selected in accordance with provisions of this title, from mutually agreeing to the establishment of a National Board of Adjustment of temporary duration and of similarly limited jurisdiction.

* * * * *

Relevant provisions of Reorganization Plan No. 3 of 1961, 75 Stat. 837, 49 U.S.C. 1324:

SECTION 1. Authority to delegate - (a) In addition to its existing authority, the Civil Aeronautics Board, hereinafter referred to as the "Board", shall have the authority to delegate, by published order or rule, any of its functions to a division of the Board, an individual Board member, a hearing examiner, or an employee or employee board, including functions with respect to hearing, determining, ordering, certifying, reporting or otherwise acting as to any work, business, or matter; Provided, however, That nothing herein contained shall be deemed to supersede the provisions of section 7(a) of the Administrative Procedure Act (60 Stat. 241), as amended [now 5 U.S.C. 556(b)].

(b) With respect to the delegation of any of its functions, as provided in subsection (a) of this section, the Board shall retain a discretionary right to review the action of any such division of the Board, individual Board member, hearing examiner, employee or employee board, upon its own initiative or upon petition of a party to or an intervenor in such action, within such time and in such manner as the Board shall by rule prescribe; Provided, however, That the vote of a majority of the Board less one member thereof shall be sufficient to bring any such action before the Board for review.

(c) Should the right to exercise such discretionary review be declined, or should no such review be sought within the time stated in the rules promulgated by the Board, then the action of any such division of the Board, individual Board member, hearing examiner, employee or employee board, shall, for all purposes, including appeal or review thereof, be deemed to be the action of the Board.

* * * * *

Relevant provisions of the Procedural Regulations of the Civil Aeronautics Board, 14 C.F.R. 300 et seq. (revision of January 1, 1968):

* * * * *

PART 302 - RULES OF PRACTICE IN ECONOMIC PROCEEDINGS

* * * * *

Sec. 302.27 Delegation to examiners and action by examiners after hearing.

* * * * *

(c) Effect of initial decision. Unless a petition for discretionary review is filed pursuant to §302.28 or the Board issues an order to review upon its own initiative, the initial decision shall become effective as the final order of the Board 30 days after service thereof. If a petition for discretionary review is timely filed or action to review is taken by the Board upon its own initiative, the effectiveness of the initial decision is stayed until the further order of the Board.

Section 302.28 Petitions for discretionary review of initial decisions; review proceedings.

(a) Petitions for discretionary review. (1) Review by the Board pursuant to this section is not a matter of right but of the sound discretion of the Board. Any party may file and serve a petition for discretionary review by the Board of an initial decision within 25 days after service thereof. Such petitions shall be accompanied by proof of service on all parties.

(2) Petitions for discretionary review shall be filed only upon one or more of the following grounds:

- (i) A finding of a material fact is erroneous;
- (ii) A necessary legal conclusion is without governing precedent or is a departure from or contrary to law, Board rules, or precedent;
- (iii) A substantial and important question of law policy or discretion is involved; or

(iv) A prejudicial procedural error has occurred.

* * * * *

(b) ANSWER. Within 15 days after service of a petition for discretionary review, any party may file and serve an answer of not more than 15 pages in support of or in opposition to the petition. If any party desires to answer more than one petition for discretionary review in the same proceeding, he shall do so in a single document of not more than 20 pages.

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

AIRLINE EMPLOYEES ASSOCIATION,

Petitioner,

v.

CIVIL AERONAUTICS BOARD,

No. 22,243

Respondent,

and

ALLEGHENY AIRLINES, INC.,

Intervenor.

ON PETITION TO REVIEW AN ORDER OF
THE CIVIL AERONAUTICS BOARD

REPLY BRIEF FOR PETITIONER

United States Court of Appeals
for the District of Columbia Circuit

FILED FEB 26 1969

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IN THE
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REPLY BRIEF FOR PETITIONER

I.

While we are not in disagreement with the CAB's generalizations regarding the necessity of exhausting administrative remedies as a preliminary to judicial review, the jurisdictional objections which the Board builds

thereon are without merit. We note in the first place that under the Federal Aviation Act, unlike, for example, the National Labor Relations Act, exhaustion is not absolutely required, but may be excused if "there were reasonable grounds" therefor. But there are two separate reasons why the exhaustion requirement was met, even without regard to this proviso. The first is that both points at issue here were admittedly raised before the Hearing Examiner, and his decision is final under Reorganization Plan No. 3 of 1961 (CAB Br. p. 43). The second reason is that the main issue in this proceeding was squarely presented to the Board by another party, which fully effectuated the exhaustion requirement, and the Board properly cites the authorities which so hold. (CAB Br. p. 21, n. 16). Since the matter is quite clear under the latter decisions, at least with respect to the main issue of contract survival,^{1/} and the representation at p. 37,

^{1/} The CAB attempts to distinguish these cases on the ground that the CAB's exercise of discretion on a petition for review involves "the application of administrative 'expertise' to the determination of a policy question" and that the Board was prompted to deny the request for discretionary review because only one union requested it. (CAB Br. p. 22). While it is true that Allegheny noted in its answer to the request for review that only one union had filed objections to the Hearing Examiner's decision (see JA 219), we read that passage as merely introductory to its argument. But even if the CAB is right in contending that Allegheny there (footnote continued)

n. 29 of the CAB's brief makes decision of the second issue unnecessary, in our view, the Court's jurisdiction in this case can be sustained whatever the effect of the Reorganization Plan. However, while we acknowledge it to be a close question, we think the Plan contemplates that parties to CAB proceedings may seek judicial review of a Hearing Examiner's initial decision under 14 C.F.R. §302.27 (CAB Br. p. 44) without first seeking discretionary review under 14 C.F.R. §302.28. The controlling language is in §1(c) of the Plan:

drew the inference that other unions preferred acceptance of the Hearing Examiner's decision to further litigation (CAB Br. p. 22), ALEA cannot be faulted because it "did not speak out" to dispel that inference. (*Id.*). The Board's rules simply do not provide for a reply to an answer to petition for discretionary review. (See 14 C.F.R. §302.27, reprinted in part at CAB Br. pp. 44-45). In any event, there is nothing in the Board's rules (14 C.F.R. §302.28, CAB Br. pp. 44-45) which would suggest to the parties that the exercise of discretion would turn on a head count. ALEA therefore had no reason to believe that its right to judicial review would be foreclosed by failure to file a piece of paper titled "Petition for Discretionary Review" stating that it joined in ALDA's petition. Yet, under the reasoning of the CAB's brief, that would have sufficed. Moreover, it is sheer speculation of counsel's part that ALEA's absence affected the CAB's action, and the assumption seems singularly unsound. It attributes to the Board a basis for denial of review which its own rules disclaim and which would probably be rejected by the Court if openly articulated. It is far more reasonable to assume that even as the Trial Examiner's decision was based entirely on precedent, the Board declined review because it was unwilling to reconsider its prior decisions.

"Should the right to exercise such discretionary review be declined, or should no such review be sought within the time stated in the rules promulgated by the Board, then the action of any such division of the Board, individual Board member, hearing examiner, employee or employee board, shall, for all purposes, including appeal or review thereof, be deemed to be the action of the Board."

(Emphasis supplied) (CAB Br. p. 43).

When this provision is read together with §1006 of the Federal Aviation Act, they "form a harmonious whole" (CAB Br. p. 18), since by virtue of the Reorganization Plan, the word "Board" in the Act must be read to encompass the decision of the Hearing Examiner when discretionary review is declined or not sought. We recognize that it may occasionally place a burden on the courts to be required to pass on a decision of the Hearing Examiner without the benefit of a prior decision of the CAB. But it cannot be gainsaid that the Reorganization Plan was proposed by the President for the convenience of the Executive Department without particular regard to that of the courts. Moreover, in a case like the present, where there is already an authoritative precedent by the Board, this Court has the benefit of the agency's views without the necessity of a futile petition for discretionary review which would absorb the

agency's energies, contrary to the purpose of the Reorganization Plan. It is also likely that the CAB would decline discretionary review where the only issue is whether substantial evidence supports the Examiner's decision; yet judicial review would be available by statute. Finally, our interpretation of the Reorganization Plan does not leave the courts helpless, for if they determine that a case cannot properly be disposed of without an authoritative decision by the Board itself, there is nothing in the Reorganization Plan which withdraws the courts' statutory authority to remand proceedings to the Board for its consideration.

II.

On the merits, our reply need not be long, because we believe that the case turns on whether the CAB committed an error of law in following the decision of the Sixth Circuit in Brotherhood of Railroad and Steamship Clerks v. United Airlines, 325 F.2d 576. On that issue, our view is, as Allegheny recognizes (Co. Br. p. 40), that the Sixth Circuit ^{incorrectly} characterized the controversy as one involving repre-

sentation rather than enforcement of rights under a contract. Our view of the matter is supported by the brief of the National Mediation Board in the Supreme Court (see Pet. Br. pp. 17-18) which both the CAB and intervenor appear to overlook. We find additional support for that position by the Supreme Court's analysis in Carey v. Westinghouse, 375 U.S. 261, particularly at 268, as well as Judge Bryan's approach in Pan American World Airways v. IBT, 275 F.Supp. 986, 994-996 (S.D. N.Y., cited at Co. Br. p. 30, n. 1).

Since Allegheny states that "ALEA does not disagree that the BRC case is squarely in point" (Co. Br. p. 40), we should perhaps note that this misstates our position. It may very well be that the result of the BRC case was correct, although we cannot accept its reasoning. For that case differed in one highly material respect from ours: The Rail-way Clerks there sought to have their contract with Capital applied to the latter's employees at United although United employees in the same class or craft were already represented by another union whose contract with United automatically covered the former Capital employees. Thus, the Clerks' union there sought to intrude upon an existing

collective bargaining relationship, partially displacing the Machinists' union as the statutory representative of the entire class or craft. The Second Circuit has held, properly we think, that Wiley v. Livingston, 376 U.S. 543, should not be extended to such a situation. McGuire v. Humble Oil and Refining Co., 355 F.2d 352 (cited in Co. Br. p. 52). As the Second Circuit said, "an order to Humble to arbitrate might force Humble to commit an unfair labor practice by 'bargaining' with a minority union when a majority union is in existence." (Id. at 358, citing many cases and Sections 8(a)(5) and 9(a) of the National Labor Relations Act). Since Section 2, Fourth of the Railway Labor Act is the equivalent of Section 9(a) of the National Labor Relations Act, it would have been a violation of the Railway Labor Act for United to have dealt with the Clerks' union with respect to employees who were a part of a class or craft represented by the Machinists. That is the point and the only point of Commissioner Eastman's remarks quoted at p. 29 of Allegheny's brief and of the authorities cited at pp. 26 and 27 thereof.

But the first sentence of Section 2, Fourth of the Railway Labor Act provides that "employees shall have the

right to organize and bargain collectively through representatives of their own choosing." Compare §7 of the NLRA. It promotes that right, and, in the absence of a majority representative, contravenes no provision of the Railway Labor Act, to enforce an agreement between an employer and a representative of a minority of his employees with respect to the working conditions of the latter's members.^{2/} Since petitioner seeks no more, the "proposition that a carrier violates the Railway Labor Act by granting exclusive recognition to a union which represents only a minority of the employees" far from being the "heart of this case" as Allegheny asserts (Br. p. 28) has nothing to do with it.^{3/} Consequently, the entire argument on pages

2/ Section 2, Eleventh of the RLA would pretermit maintenance of the union's security and check-off provisions of the ALEA-Lake Central agreement. However, even if some provisions were illegal, "total obliteration of this contract is not in obedience to and command of the statute [and] is contrary to common-law doctrine." Cf. Labor Board v. Rockaway News Co., 345 U.S. 71, 79.

3/ We take exception to Allegheny's charge that petitioner is engaged in "top down" organizing. (Co. Br. p. 28). Petitioner's members have already been organized. What is really involved in this case is whether Allegheny shall be permitted to succeed in "top down" disorganization.

22-32 of Allegheny's brief is wholly irrelevant, and we need not be concerned with its details. Nor does the Act justify Allegheny's argument (Co. Br. pp. 48-50) that the requirement of Section 204 to establish system boards of adjustment applies only to carriers and majority representatives. Section 204 declares that to be the "duty of every carrier and of its employees acting through their representatives, selected in accordance with the provisions of Sections 201 to 208 of the Act," incorporating by reference Sections 1, 2, and 4-13 of the Railway Labor Act. ALEA was concededly a representative so chosen at Lake Central and even if the applicability of Section 204 to the present controversy were to be determined on the basis of its status at Allegheny, it is a representative of employees chosen pursuant to the first sentence of Section 2, Fourth quoted above.

Allegheny's effort (Co. Br. p. 21) to ascribe limitations to the provision of the successor clause of the ALEA-Lake Central agreement cannot be reconciled with that provision's unambiguous language. Allegheny builds its argument on the possibility of a conflict with the statu-

tory representative of the surviving carrier; but the possibility that Section 29(c) could not lawfully be enforced in that situation is not warrant for assuming that the parties did not intend that it be given full effect when to do so would be lawful. Allegheny baldly asserts that its agreement with Lake Central bound it to "accept only reasonable labor conditions . . . "

(Co. Br. pp. 18-19, our emphasis), though that word does not appear in the agreement. We need not inquire what effect, if any, may be given to the self-serving statements of parties to a contract when the rights of a third party are affected by the contract, for it passes belief that Allegheny would have abandoned this profitable merger on this issue. In any event, Allegheny's obligation to assume Lake Central's obligations under Article VIII merely incorporates the requirements of Delaware corporation law, to which both parties were subject.

Allegheny fails entirely to meet the problems which
of the Railway Labor Act
Section 6 creates for it. In the present context, Section 6 forbids abrogation of the ALEA-Lake Central contract

without the 30-day notice, and invalidates the Board order unless Allegheny is held to be bound. (See Pet. Br. pp. 20-21). And of course Allegheny's testimony before the CAB cannot remotely be viewed as compliance with the requirement of Section 6, of a "written notice of" the intended change "and the time and place for the beginning of a conference * * * ."

III.

The foregoing discussion, while not addressed to the CAB's argument on the merits, covers the major substantive points made therein. Since we deal here with an error of law, rather than the exercise of discretion, the decisions which call for limited review of Board decisions of factual or economic issues are inapposite; a precedent more closely in point is the first Cheney case, 318 U.S. 80.

The CAB says that its order did not "foreclose the employees of ALEA from enforcing any private rights they may have had." (CAB Br. p. 34). But such rights are not exclusive, compare Smith v. Evening News, 371 U.S. 195,

and we submit that their implementation furthers the same public policy as the labor protective provisions. (See Pet. Br. pp. 10-11). We have not abandoned our contract remedy. But in the United litigation, the Clerks' union was faulted for abandoning the review proceeding in this Court, before starting an independent contract action. United argued in the Supreme Court that "The Contract Question Should Have Been Left with the Court of Appeals for the District of Columbia," Brief for Respondent, No. 31 Oct. Term, 1964, p. 45. This "separate and independent reason for affirming the dismissal of the complaint" (Id., developed at pp. 45-48) may well have been the reason that some or all of the Supreme Court majority dismissed the writ as improvidently granted, 379 U.S. 26, over Justice Harlan's protest that the issues raised by the Sixth Circuit's decision should be decided. Thus forewarned, petitioner would have been ill-advised, absent a holding from this Court that the contract remedy remains available, to abandon the present proceeding.

CONCLUSION

For the reasons stated in our opening brief and herein, the order of the CAB should be set aside with directions to impose the conditions of merger stated at page 24 of our opening brief.

Respectfully submitted,

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SUPPLEMENTAL APPENDIX

473

Docket 19151

Joint Exhibit No. 280 (Rev.)
Page 1 of 1

ALLEGHENY AIRLINES, INC.

PERSONNEL FURLoughS AND TRANSFERS
(Information Response Item A.19)

As the surviving corporation, Allegheny intends to offer employment to all Lake Central employees to the greatest extent feasible. As explained on Joint Exhibit No. 265, a 10% reduction in general management expense is being budgeted as a matter of policy. This policy is prudent in view of the substantial losses reported by Lake Central in 1967. While no personnel furloughs are being projected at this time, it is apparent that there will be surplus employees for varying periods of time, depending on the function involved. It is hoped that normal attrition, re-assignment to other duties, and normal growth will permit absorption of the surplus. Nevertheless, should economic conditions require limited furloughing, this matter will, as a matter of prudent business judgment, be reviewed at that time in the light of known circumstances.

IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22,243

AIR LINE EMPLOYEES ASSOCIATION, Petitioner,

v.

CIVIL AERONAUTICS BOARD, Respondent,

AND

ALLEGHENY AIRLINES, Inc., Intervenor.

Petition To Review An Order Of The Civil Aeronautics Board

BRIEF FOR INTERVENOR

United States Court of Appeals
for the District of Columbia Circuit

FILED FEB 28 1969

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TABLE OF CONTENTS

	<u>Page</u>
COUNTER-STATEMENT OF ISSUES.....	1
STATUTES INVOLVED.....	2
STATEMENT OF FACTS.....	5
ARGUMENT.....	14
I. APPELLANT'S UNEXCUSED FAILURE TO SEEK REVIEW OF THE HEARING EXAMINER'S DECISION PRECLUDES A CHALLENGE TO THE VALIDITY OF THE BOARD'S ORDER.....	14
II. THE CIVIL AERONAUTICS BOARD DID NOT ABUSE ITS DISCRETION BY REFUSING TO ORDER ALLEGHENY TO ASSUME THE OBLIGATIONS OF THE ALEA-LAKE CENTRAL CONTRACT.....	16
A. Allegheny Did Not Agree To Accept The ALEA- Lake Central Contract As Part Of The Merger Agreement And Accordingly Is Not Bound To Assume It As A Matter Of Contract Law.....	18
B. Allegheny Was Not Bound By The Successor Clause Contained In The ALEA-Lake Central Contract To Assume That Contract.....	19
C. Allegheny Could Not Assume The ALEA-Lake Central Contract Without Violating The Railway Labor Act	22
D. Even If The Requested Relief Could Be Granted, The Proper Forum For Deciding The Underlying Question Of Representation Is The National Mediation Board.....	33
E. ALEA Has Not Demonstrated A Need For The Requested Condition.....	42
F. The Decision In <u>Wiley v. Livingston</u> Is Not Applicable To The Facts Of This Case.....	46
G. ALEA Has Failed To Demonstrate That The CAB Abused Its Discretion In Refusing To Order Allegheny To Assume The Contract.....	55

TABLE OF CONTENTS

	<u>Page</u>
III. THE CIVIL AERONAUTICS BOARD DID NOT ABUSE ITS DISCRETION BY REFUSING TO ORDER ALLEGHENY TO ASSUME THE BURDEN OF PROOF IN A DISPUTE OVER WHETHER A CHANGE IN EMPLOYMENT STATUS IS DUE TO THE MERGER.....	56
CONCLUSION.....	60
CERTIFICATE OF SERVICE	61

COUNTER-STATEMENT OF ISSUES

- I. Does Appellant's unexcused failure to seek review of the Hearing Examiner's decision preclude a challenge to the validity of the Board's order?
- II. Did the Civil Aeronautics Board abuse its discretion by refusing to order Allegheny to assume the obligations of the ALEA-Lake Central contract?
- III. Did the Civil Aeronautics Board abuse its discretion by refusing to order Allegheny to assume the burden of proof in a dispute over whether a change in employment status is due to the merger?

STATUTES INVOLVED

Involved are Section 408(b) of the Federal Aviation
Act, 49 USC § 1378(b)^{1/}; Section 1006(e) of the Federal

1/ Section 408(b), 49 U.S.C. § 1378(b):

"Any person seeking approval of a consolidation, merger, purchase, lease, operating contract, or acquisition of control, specified in subsection (a) of this section, shall present an application to the Board, and thereupon the Board shall notify the persons involved in the consolidation, merger, purchase, lease, operating contract, or acquisition of control, and other persons known to have a substantial interest in the proceeding, of the time and place of a public hearing. Unless, after such hearing, the Board finds that the consolidation, merger, purchase, lease, operating contract, or acquisition of control will not be consistent with the public interest or that the conditions of this section will not be fulfilled, it shall by order approve such consolidation, merger, purchase, lease, operating contract, or acquisition of control, upon such terms and conditions as it shall find to be just and reasonable and with such modifications as it may prescribe..."

Aviation Act, 49 USC § 1486(e); Section 2, Third, Fourth,
^{1/} Ninth, and Eleventh^{2/} of the Railway Labor Act,

1/ Section 2, Eleventh, 64 Stat. 1238, 45 U.S.C. § 152,
Eleventh:

"Notwithstanding any other provisions of this Act, or of any other statute or law of the United States, or Territory thereof, or of any State, any carrier or carriers as defined in this Act and a labor organization or labor organizations duly designated and authorized to represent employees in accordance with the requirements of this Act shall be permitted--

"(a) to make agreements, requiring, as a condition of continued employment, that within sixty days following the beginning of such employment, or the effective date of such agreements, whichever is the later, all employees shall become members of the labor organization representing their craft or class: Provided, That no such agreement shall require such condition of employment with respect to employees to whom membership is not available upon the same terms and conditions as are generally applicable to any other member or with respect to employees to whom membership was denied or terminated for any reason other than the failure of the employee to tender the periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership.

"(b) to make agreements providing for the deduction by such carrier or carriers from the wages of its or their employees in a craft or class and payment to the labor organization representing the craft or class of such employees, of any periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership: Provided, That no such agreement shall be effective with respect to any individual employee until he shall have furnished the employer with a written assignment to the labor organization of such membership dues, initiation fees, and assessments, which shall be revocable in writing after the expiration of one year or upon the termination date of the applicable collective agreement, whichever occurs sooner..."

45 USC § 152, Third, Fourth, Ninth, and Eleventh; Section 204 of the Railway Labor Act, 45 USC § 184; Section 9(a) of the Labor-Management Relations Act, 29 USC § 159(a)^{1/}; and Section 301(a) of the Labor-Management Relations Act, 29 USC § 185(a).^{2/} Statutory references are set forth in the footnotes or accompanying the pertinent textual material found in the brief.

1/ Section 9(a), 61 Stat. 143, 29 U.S.C. § 159(a):

"Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment:
Provided, That any individual employee or a group of employees shall have the right at any time to present grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect:
Provided further, That the bargaining representative has been given opportunity to be present at such adjustment."

2/ Section 301 (a), 61 Stat. 156, 29 U.S.C. § 185(a):

"Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

STATEMENT OF FACTS

Allegheny Airlines, Inc., (Allegheny) is an air carrier engaged in interstate commerce pursuant to a certificate of public convenience and necessity issued by the Civil Aeronautics Board (CAB) in accordance with the Federal Aviation Act of 1958, 49 USC Sections 1301-1542. It is also a "carrier" and its employees are "employees" within the meaning of Title II of Railway Labor Act, 45 USC Sections 181, 182. This appeal arises out of the merger of Lake Central Airlines, Inc. (Lake Central) into Allegheny on July 1, 1968. This merger, like all in the airline industry, is subject to the approval of the Civil Aeronautics Board pursuant to the provisions of Section 102, 401 (b) and 408 of the Federal Aviation Act (49 USC Sections 1302, 1371 (b) and 1378). After a hearing was held under Section 408(b) to determine whether the proposed merger would be in the public interest, the CAB approved the merger subject to certain conditions in Order Nos. E-26968 (June 24, 1968) and 68-7-1 (July 1, 1968). Review is sought by the Airline Employees Association (ALEA) under Section 1006 (a) of the FAA, 49 USC 1486(a).

Prior to the merger, Allegheny had labor contracts for the pilots and stewardesses, both represented by the Airline Pilots Association (ALPA), and mechanics represented by the International Association of Machinists (IAM). It did not have contracts covering flight control employees, customer

service agents, secretaries and clerks, reservation clerks and communications operators (J.A. 54, 113-114); also prior to the merger, Lake Central's pilots and stewardesses were represented by ALPA; its mechanics by International Brotherhood of Teamsters (IBT); its flight control employees by the Airline Dispatchers Association (ALDA); and the customer service agents and reservation agents (referred to as flight and passenger service employees) by ALEA. (J.A. 55, 116). In a combined unit ALEA^{1/} would represent a minority of the employees. In fact, ALEA would represent only one of every four employees (467 of 1,954 employees, Appendix A, Page 2).

The Lake Central contract, having an expiration date of February 1, 1970, contained contract clauses relating to rates of pay and conditions of employment. The contract also contained a provision for the establishment and administration of a system board of adjustment, and a clause declaring that "the provisions of this agreement shall be binding on any successor or merged company or companies, or any successor in the control of the company." (J.A. 266)

On October 18, 1967, Allegheny and Lake Central entered into an agreement under which Lake Central would be merged with Allegheny with Allegheny as the surviving carrier.

(J.A. 5) The agreement contains no provision under which

1/ ALDA and the IBT would also represent a minority of employees in their respective classes.

Allegheny would assume the labor contracts of Lake Central. It does contain a section, Article V, that Allegheny would accept the Labor Protective Conditions that the CAB had imposed in the past. (J.A. 57-58) Allegheny and Lake Central filed a joint application to the CAB requiring approval of their agreement. ALEA filed a petition to intervene on October 27, 1967. The motion was granted on November 20, 1967. The other unions' petitions to intervene and their motions were granted.

In its brief to the CAB Hearing Examiner, ALEA took the position that the merger should be approved if Allegheny would assume the ALEA-Lake Central contract. In the alternative they requested that the CAB impose as conditions of the merger that Allegheny, as the surviving carrier, abide by the terms of the contract and that the contract governs all employees of the surviving company in the same class or craft and not only the Lake Central employees. (J.A. 89) Other Lake Central unions requested that either their contract or representative status continue as a condition of the merger. None of the unions involved, including ALEA, requested that Allegheny be ordered to arbitrate whether the Lake Central contracts or any of their clauses survived the merger.

A number of the unions sought revision of the Labor Protective Conditions. Among these, ALDA and IBT, but not the Petitioner, requested a condition requiring that in any

dispute between the carrier and an employee as to whether a change in employment status is due to the merger, the carrier shall assume the burden of proof.

Throughout the proceedings before the CAB Hearing Examiner, Allegheny expressed its willingness to accept the Labor Protective Conditions needed to protect those employees affected by the merger. (J.A. 45, 114-115) At the same time Allegheny made it clear that the conditions of employment existing at Allegheny would prevail in the merged operation. Specifically, Allegheny took the position that it would not recognize the ALEA-Lake Central contract after the merger.

(J.A. 116) It was contemplated that after the merger the Lake Central employees would receive the higher wages and improved hospitalization and group insurance available at Allegheny. (J.A. 45, 74, 75) A summary of Allegheny's position can be found in the written testimony of Leslie O. Barnes, President of Allegheny, and in the Allegheny brief to the Examiner which states:

"As the surviving corporation, all Allegheny's outstanding labor agreements will be applicable to the appropriate categories of employees. Thus, Allegheny's contract with Air Line Pilots Association for pilots, with Air Line Pilots Association for flight attendants, and with International Association of Machinists and Aerospace Workers for mechanics will cover all individuals in these craft and class categories.

"Lake Central's mechanics are represented by the International Brotherhood of Teamsters (IBT); its dispatchers are represented by Air Line Dispatchers Association (ALDA); and certain ground employees are represented by Air Line Employees Association

(ALEA).. These agreements will not be recognized by Allegheny as the surviving corporation." Brief of Joint Applicants to Examiner Milton Shapiro - February 29, 1968.)

Allegheny took this position on the advice of counsel. The bases for this position were the dual requirements of the Railway Labor Act that there be one representative for an entire class or craft and that the selection of this representative must reflect the desires of the majority of the employees in the craft or class. Where, as in this case, ALEA would represent only one out of every four employees, Allegheny is under a legal obligation not to recognize ALEA as the representative of all employees in the appropriate class or craft. Nor could Allegheny recognize ALEA as a representative for a portion of the class, i.e., those employees who were formerly Lake Central employees. Mr. Barnes stated in his testimony that any group of employees was free to seek a representation election under the Railway Labor Act and that Allegheny would deal with any union so selected (J.A. 46).

On April 26, 1968, the Hearing Examiner approved the merger without requiring Allegheny to assume the obligations of all outstanding collective bargaining agreements of Lake Central. Recognizing the minority status of the Lake Central unions, the Examiner held that the question of contract survivability was one of representation to be decided by the procedures of the National Mediation Board.(J.A. 188). In this regard the Examiner relied on BR v. United Airlines,

325 F. 2d 576 (6th Cir. 1963), cert. denied as being improvidently granted after oral arguments on merits were made, 379 US 26 (1964). The Examiner further rejected the decision of Wiley v. Livingston, 376 US 26 (1964), as not being applicable to mergers in the airline industry (J.A. 189-190). In this regard, he noted the issue posed by the Lake Central unions, continuing applicability of the contract, was much broader than the duty to arbitrate considered in Wiley (J.A. 189). ALEA did not seek review of the Examiner's decision by the board.^{1/}

1/ Rule 302.27(c) of the CAB Rules and Regulations provides that unless a petition for discretionary review is filed, the initial decision of the Examiner becomes effective as the final order of the Board. Section 302.28, which provides for discretionary review, requires a petitioner to state separately each issue for review. On May 17, 1968, ALDA filed a request for discretionary review. ALDA's arguments went to the continuity of the ALDA-Lake Central contract solely. It did not rely on the successorship clause but declared "survival of contract is a question of labor policy and not one of interpretation of the document" (J.A. 215). By Order No. E-26968, dated June 24, 1968, the CAB refused to review the Examiner's decision (J.A. 222). On July 1, 1968, the Board amended the certificates of the carrier involved (J.A. 227).

On July 1, 1968, Allegheny began to merge the airlines operationally.^{1/} On July 18, 1968, ALEA filed a collateral attack on the CAB merger order in a petition to the CAB seeking revocation of Allegheny's certificate on the ground that Allegheny refused to apply the ALEA-Lake Central contract to all the employees in the appropriate class (J.A. 237-240). The CAB, as of this date, has not acted on this petition.

1/ Inasmuch as ALEA is requesting that the former Lake Central employees be put in the status that existed prior to July 1, 1968, it is important for this court to be aware of changes that have occurred since that date in order to evaluate the impact upon the employees and Allegheny if the conditions requested by ALEA are so ordered. McLeod v. General Electric Co., 385 US 533 (1966); NLRB v. Schnell Tool & Die Co., 359 F. 2d 39 (6th Cir. 1966).

Immediately following the merger, on July 1, 1968, and July 8, 1968, the reservation agents and station agents received pay increases ranging between \$31 and \$140 per month. The secretary and clerks who remained with the carrier have received increases in pay since the merger ranging generally between \$5 and \$30 per month.

In addition to wages, the former Lake Central employees received numerous other improvements in their benefits, such as, fully paid hospitalization coverage for themselves and their families, increased vacation and sick leave benefits, better overtime pay for work performed on holidays, and better shift pay differential.

At the eight common points in the combined system, the former Lake Central employees were integrated into a combined work force. Also, there have been transfers between locations. (Affidavit of E. C. Taylor, Appendix A.).

On September 26, 1968, Judge Hart of the United States District Court for the District of Columbia in Civil Action No. 1847-68 refused to grant relief requested by the IBT that would have required Allegheny to adhere to the IBT-Lake Central contract on the ground, inter alia, that the matter involved a representation dispute over which the National Mediation Board had exclusive jurisdiction.

In its petition for review, ALEA states its fundamental objection to the decision is that the Lake Central employees lose "the aid of their collective (bargaining) representative," i.e., the union loses its representative status in the merged unit. (Pet. Br. 15-16) However, it does not seek to have representative status restored (which it could not); instead, ALEA seeks to require Allegheny to assume the obligation of the arbitration clause in the ALEA-Lake Central contract and to arbitrate which, if any, contract clauses survived the merger, or in the alternative to assume the entire contract (Pet. Br. 6, footnote 5.). Unlike its position before the CAB, in the earlier proceeding in this case and in the separate revocation proceeding, ALEA requests of this court that the contract be applicable only to the former employees of Lake Central, rather than to all the employees of Allegheny. (Pet. Br., p. 4, footnote 5)

Additionally, ALEA is requesting, for the first time, that this court impose as a condition of the merger that the burden of proof be on Allegheny rather than on the employee

in any dispute as to whether a change in employment status
is due to the merger.

ARGUMENT

I. APPELLANT'S UNEXCUSED FAILURE TO SEEK REVIEW OF THE HEARING EXAMINER'S DECISION PRECLUDES A CHALLENGE TO THE VALIDITY OF THE BOARD'S ORDER.

This is a case where appellant has never filed for review of the adverse determinations of the CAB's Hearing Examiner to the CAB itself. There being no claim that reasonable grounds excuse appellant's failure to seek review, Section 1006(e) of the Act precludes consideration of the CAB's order adopting the Examiner's decision. Moreover, the relief which it now seeks, viz. conditions attached to the merger which would require arbitration under ALEA-Lake Central contract for the former Lake Central employees and changes in the burden of proof under the existing Labor Protective Conditions, are not the same as it sought in the initial hearing. Therefore, this court should enter a decree dismissing this appeal because of appellant's failure to exhaust the appropriate administrative procedures.

Section 10 of the Administrative Procedure Act 5 USC § 1009 provides for judicial review of all questions of law relevant to agency decisions except where precluded by statute. We are therefore brought to Section 1006(e)^{1/} of the Federal Aviation Act 49 USC 1486(e) which provides, in part, that:

"No objection to an order of the Board or Administrator shall be considered by the Court unless such objection shall have been urged before the Board or Administrator or, if it was not so urged, unless there were reasonable grounds for failure to do so."

^{1/} This section was not nullified or modified in any way by the Reorganization Act of 1961, 49 USC § 1324.

If a party does not urge his objection before the Board, this Court has held that the objection is not timely and the Board's order must be affirmed.

This provision of the Act contemplates that the CAB, like any other appellate body, will be apprised of the specific questions which appellant intends to raise and afforded an opportunity to consider on the merits questions to be argued upon review of its order. The obvious purpose of this section is to adopt the customary appellate procedure whereby the appellate tribunal (here, the CAB) is not required to search the record for alleged errors not pointed out or formally specified by the appellant. The raising of an objection before the CAB serves to give the Board an opportunity to correct errors and to examine the requested relief in the light of the entire record. If this requirement did not exist, the CAB could not function inasmuch as it would have to carefully scrutinize every record with the idea that any items in, or even out of, the record could provide a potential point of exception before the Court.

Failure to exhaust administrative remedies goes to the very jurisdiction of the court. Cf. NLRB v. Operating Engineers, Local 66, 357 F.2d 841 (3rd Cir. 1966). The reason for this lies in the purpose of creating administrative agencies "equipped or informed by experience to deal with a specialized field of knowledge, and whose findings

within that field carry the authority of an expertness which courts do not possess." Universal Camera Corp. v. NLRB, 340 U.S. 474, 488 (1951). This purpose would be easily frustrated if all it meant was that a party need only pursue the prescribed administrative procedures through their initial steps but not to their ultimate conclusion before seeking judicial review.

It therefore must be concluded that appellant lost the right to complain of errors in the Hearing Examiner's decision when it failed to seek discretionary review from the Board. This is a result of the policy which requires the Board's expertise to be brought into play by a dissatisfied litigant before recourse is had to the courts. Accordingly, this court lacks jurisdiction to grant the relief requested by ALEA. Seaboard and Western Airlines, Inc., v Civil Aeronautics Board, 183 F. 2d 975 (D.C. Cir. 1950); Cf. Puerto Rico Drydock & Marine Terminal v. NLRB, 284 F. 2d 212, 215-216 (1960) cert. den. 364 U.S. 883 (1960); NLRB v. Operating Engineers, Local 66, 357 F. 2d 841 (3rd Cir. 1966).

II. THE CIVIL AERONAUTICS BOARD DID NOT ABUSE ITS DISCRETION BY REFUSING TO ORDER ALLEGHENY TO ASSUME THE OBLIGATIONS OF THE ALEA-LAKE CENTRAL CONTRACT

While the petitioner claims certain rights normally reserved to a bargaining agent, nowhere in its brief does it speak of ALEA as the collective bargaining representative

for a specific class of employees. Since ALEA is not the duly selected bargaining representative for Allegheny employees, Allegheny cannot as a matter of law recognize the ALEA as the employees' bargaining representative to administer the defunct ALEA-Lake Central contract. Nor could Allegheny recognize it as the bargaining agent for those Allegheny employees who were formerly employed by Lake Central as this would be an inappropriate class.

Rather than face up to its lack of representative status, ALEA bases its claims to bargaining rights on the defunct ALEA-Lake Central contract. In alternate contentions, ALEA argues that this Court should require as a condition of the merger that Allegheny observe all the terms of the collective bargaining agreement, including the establishment of a system board of adjustment, or, at a minimum, that Allegheny assume the obligations of the arbitration clause of the contract and arbitrate before a system board of adjustment thereunder which terms of the contract are still operable. Unlike its position before the CAB in this case and in the revocation proceeding which is still pending, ALEA now claims that the terms of the contract be applied only to the former Lake Central employees. While ALEA's contentions insofar as the survivability of the entire contract is concerned appear to be grounded on the premise that Allegheny assumed the contract as part of the merger or is bound by a successor clause, its principal

contention, the duty to arbitrate, is based on the Supreme Court's decision in Wiley v. Livingston, 396 U.S. 543 (1964). Each of these claims will be considered in the following sections.

A. Allegheny Did Not Agree To Accept The ALEA-Lake Central Contract As Part Of The Merger Agreement And Accordingly Is Not Bound To Assume It As A Matter Of Contract Law

On page 4 of the Petitioner's Brief, ALEA mentions that Article VIII of the merger agreement declares that "all debts, liabilities, and duties" of Lake Central shall attach to Allegheny after the merger. This Article does not refer to labor contracts or labor conditions. In fact, nowhere in the merger agreement does it state that Allegheny would assume the Lake Central labor agreements. On the same pages of the Petitioner's Brief, ALEA admits that the only Article in the merger agreement referring to employees, Article V, declares that Allegheny will accept only reasonable labor conditions that have been previously prescribed by the CAB in other mergers. In prior mergers CAB has rejected conditions requested by the unions which would require assumption of the contract as part of the merger, Alaska-Cordova, Order E-26087 (1967); Frontier-Central, Order E-25694(1967); and Western-Pacific Northwest, Order E-25240 (1967). Accordingly, it is clear, when Article VIII is read in light of Article V and Board precedent, that Allegheny was not assuming the Lake Central contracts.

Allegheny did not agree to accept the ALEA-Lake Central contract and accordingly is not legally bound as a matter of contract law to assume that contract.

Any ambiguity on this point was removed by Allegheny and Lake Central during the hearings. Allegheny made its position clear before the CAB long before the merger was consummated when it announced at the outset of the merger proceedings that it would not assume or be bound by any of Lake Central's labor agreements. There was no dissent from Lake Central, the other party to the merger agreement.. "The interpretation given by the parties themselves to the contract as shown by their acts will be adopted by the court, and to this end not only the acts but the declarations of the parties may be considered." Williston on Contracts, Rev. Ed., Vol. 3 § 623. ALEA was certainly not misled about Allegheny's intention or the effect of the merger agreement, for it requested the CAB to impose its contract on Allegheny. Moreover, although ALEA mentions the merger agreement, it does not contend that Allegheny intended to assume the ALEA-Lake Central control under the terms of the merger agreement, or that Allegheny ever made any representation indicating that it would be so bound.

B. Allegheny Was Not Bound By The Successor Clause Contained In The ALEA-Lake Central Contract To Assume That Contract

ALEA in its Petition does not specifically state that Allegheny must bargain with it because Allegheny is the

successor to Lake Central (Petition pp. 22-23). In fact, ALEA's entire case regarding Allegheny's duty to assume the complete contract, as opposed to Allegheny's duty to arbitrate, rests on the successor clause found in the Lake Central contract. Allegheny believes any possible argument along this line should be laid to rest. The ALEA-Lake Central agreement was negotiated and entered into on the assumption that ALEA has been and would continue to be the "duly designated and authorized representative" for all employees in the appropriate craft or class of the Lake Central agreement. Section 1. (J.A.248) Its terms and conditions can only be rationalized on that assumption. When this premise fell with the merger of Lake Central into Allegheny, the entire contract fell.

Unless the ALEA were the majority representative, the union security agreement it contained (Agreement, Section 27) would be unlawful. Section 2, Eleventh, of the Railway Labor Act, authorizing such an agreement, clearly contemplates that it shall apply only where the union represents all employees in the craft or class. Provisions such as seniority rosters (Section 11), displacement rights (Section 19), preference bidding (Section 18), transfers (Section 11(c)), and promotions (Section 18) are meaningful only when applied to all employees similarly situated. Thus, the provisions of the contract show that it was designed only to cover an entire craft or class, not a fraction of a bargaining unit.

ALEA relies on Section 29(c) which provides in part that: "The provisions of this agreement shall be binding upon any successor or merged company or companies, or any successor in control of the company." The agreement does not simply provide -- as ALEA would have it -- that it was, without qualification, binding in the event of a merger. What was contemplated was that in the event of a corporate change in which the carrier remained intact and the basic employee complement retained its separate identity, the agreement would be binding on the successor. This would occur in the event of the sale of Lake Central as a unit without physical integration into another airline, or in a mere change in corporate name or structure - but where employees from other carriers are to be considered - as in a consolidation or merger - then the agreement would be applicable only if the employees of Lake Central constituted a majority in the merged unit following the merger. This interpretation is supported by reading subsection (c) of Section 29 in conjunction with subsection (a) which provides that "Nothing in this agreement shall be construed to limit or deny any employee hereunder any rights and privileges to which he may be entitled under the provisions of the Railway Labor Act." If Section 29(c) were read, as now sought by ALEA, to require the carrier to bargain with a minority union, it would be denying the employees the right to have a duly selected representative for all the employees in the craft and class of the merged carrier as required by the Railway Labor Act and thus in violation of Section 29(a).

Petitioner's reliance on Section 6 of the RLA (45 USC § 156) is ill-founded. Allegheny will be the first to admit that if it were bound by the ALEA-Lake Central contract, it would have to give a 30-day notice before instituting a change. Of course, the question is whether there existed a contractual obligation on the part of Allegheny following the merger. However, assuming a contractual obligation did exist, Allegheny's notice during the hearing that it would not assume the agreement was well in advance of the 30-day notice contained in the statute.

C. Allegheny Could Not Assume The ALEA-Lake Central Contract Without Violating The Railway Labor Act

While there would appear to be two questions before the Court -- representative status and contract survivability (either in its entirety or merely the arbitration clause) -- the Sixth Circuit's opinion in BRCA v. United Air Lines, 325 F. 2d 576 (6th Cir. 1963) discussed infra, upon which the CAB relied, makes clear that the issue of

contract survivability is the same as the issue of representation. Consequently, for purposes of determining whether Allegheny has complied with the Railway Labor Act for purposes of this proceeding, it is necessary to determine whether ALEA is the duly selected bargaining representative for the majority of employees in question. This should be done before it can be determined whether Allegheny should be required under the guise of new conditions to bargain with ALEA as the bargaining representative for all or a portion of the employees.

Before discussing the Railway Labor Act, it is necessary to say a brief word on the status of ALEA after the merger. Nowhere in its brief does ALEA claim to be the majority representative of all the employees in the craft or class. In fact, assuming that all former Lake Central employees want ALEA to represent them, ALEA would represent only 448 employees in the class as opposed to 1,605 who have not indicated any desire to be represented by ALEA. Nor can ALEA rely on its prior certification inasmuch as ALEA was certified only for Lake Central, and not Allegheny employees, and the former Lake Central employees constitute a minority of the entire craft.^{1/} In summary, in light of

^{1/} ALEA has not filed authorization cards with the National Mediation Board under NMB Rule 1206 indicating that they represent a majority of the employees or that they are seeking an election in that class.

ALEA's status it is Allegheny's view that it cannot, under the RLA, recognize it as the employees' bargaining representative or allow it to administer the ALEA-Lake Central contract, whether this is done for all or a portion of the employees.

In Purolator Products, Inc., 160 NLRB 80 (1966), a case similar to the one now before the court, the National Labor Relations Board held that where it was not clearly shown that a union represented the majority of the employees after merger, the employer did not violate the National Labor Relations Act by refusing to bargain with the union. In that case the Van Nuys and Eagle Rock plants of Purolator Products were merged and relocated in a new plant at Newbury Park. Prior to the merger, the union, after winning by a vote of 60 to 9, was certified as the bargaining agent for the employees at Van Nuys. Of the 70 employees in Newbury Park, 32 were former Van Nuys employees, 19 were former Eagle Rock employees, and the remaining 19 employees who had not selected a union to represent them were newly hired. Because there was no showing that a majority of the employees had actually designated the union to act as its collective bargaining representative, the NLRB found that its General Counsel had not shown that the union represented the majority of the employees and consequently the employer did not refuse to bargain with the union. In another segment of the same case the NLRB held

that the employer violated the NLRA by recognizing another union that did not represent a majority of the employees.

The Railway Labor Act, as interpreted by the National Mediation Board and Court decisions under this Act, requires that a bargaining representative must represent an entire craft or class of employees of a carrier. Specifically, the Act indicates that both the carrier and the employees are to designate representatives who are to confer when disputes arise, § 2, Second, 45 U.S.C. § 152, Second, and goes on to provide:

"Third: Representatives, for the purpose of this Act, shall be designated by the respective parties without interference, influence, or coercion by either party over the designation of representatives by other; and neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives.

"Fourth: Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be their representative of the craft or class for the purpose of this Act. No carrier, its officers, or agents, shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees ...

"Ninth: If any dispute shall arise among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of this chapter, it shall be the duty of the Mediation Board . . . to certify to both parties . . . the name or names of the individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, and certify the same to the carrier. Upon receipt of

such certification the carrier shall treat with the representative so certified as the representative of the craft or class for the purposes of this chapter. In such an investigation, the Mediation Board shall be authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier . . ."

These sections have been interpreted by the National Mediation Board (NMB) as requiring that the entire craft or class of a carrier be represented by one collective bargaining representative. The NMB expressed the reasons behind its rule that an entire craft or class of one carrier must be represented by a single representative in Matter of Representation of Employees of the New York Central Railroad Company - Yardmen, 1 NMB Determinations of Craft or Class 197, (1941):

"(T)he Board is of the view that the idea of collective bargaining with a carrier denotes a collective participation of all the carrier's employees included in a single craft or class in its negotiations with the carrier by the method of representation.

"Note that the Act speaks of a majority of a craft or class determining 'who shall be the representative' (not the representatives). The subjects 'craft or class' and 'representative' are both given in the singular number. Doubtless serious arguments may be made both for and against each method. The Act leaves the Board in no doubt that Congress had in mind single representation for each craft or class on each carrier when enacting it; and that had the Congress thought subdivisions of a craft or class or of a carrier as desirable methods of representation it would have made provision for their use.

"Finally, the Board concludes as a matter of law that the Railway Labor Act vests the Board with no discretion to split a single carrier or combine two or more

carriers for the purpose of determining who shall be eligible to vote for representatives of a craft or class of employees under Section 2, 9th, of the Act, and the arguments that it has such power fails to furnish any basis of law for such administrative discretion." id at 209-10.^{1/}

The above discussion is based on the statement of ALEA in its footnote 5 that its contract should be applied only to those Allegheny employees who were former Lake Central employees. However, since ALEA has not abandoned its position in the CAB revocation proceeding where it seeks to represent all the employees in the class while at most representing only 457 in a unit of 2,053, an order directing Allegheny to bargain with ALEA would be in direct contravention of the other requirement of the Railway Labor Act that the bargaining representative must be the choice of the majority of the employees in the craft or class.

1/ This rule has been reaffirmed by the NMB in many later decisions. In Matter of Representation of Employees of KLM Royal Dutch Airlines, 2 NMB Determinations of Craft or Class I (1953) the NMB stated:

"Representation under this Act is on the basis of craft or class, is carrier-wide, and the majority of the craft or class determines who shall represent them. There is no provision made in the Act for partial or minority representation." id at 4

Recently the Supreme Court in Railway Clerks v. Non-Contract Employees, 380 U.S. 650, 659 (1965) noted that the Railway Labor Act did not permit the division of crafts or classes of a single carrier into smaller units for collective bargaining purposes.

Similarly, a condition requiring that Allegheny assume the contract for a portion of the employees will, as a practical matter, discussed infra, have the same effect as ordering Allegheny to recognize ALEA as the representative for the entire class.

The proposition that a carrier violates the Railway Labor Act by granting exclusive recognition to a union which represents only a minority of the employees -- which is the heart of this case -- is deeply embedded in both the original philosophy and subsequent interpretation and administration of the Railway Labor Act. Securing recognition as the exclusive bargaining representative of all the employees regardless of the employees' wishes or "top-down" organizing is plainly incompatible with the philosophy that the law should protect employees against interference by employers or labor organizations in the choice of representatives. "Top-down" organizing is equally inconsistent with the principle of majority rule.

This express prohibition against recognition of minority unions is also found in legislative history of the RLA. In 1934 the RLA was substantially amended. The right of employees to organize to bargain collectively was clarified. The draftsman of the 1934 amendments was Joseph B. Eastman, Federal Coordinator of Transportation, who testified extensively at Congressional hearings on the proposed legislation. During the hearings, railroad spokesmen suggested amendments to Commissioner Eastman's draft, which

would have, in his opinion, provided for recognition of minority unions. Commissioner Eastman vigorously objected:

". . . Recently the idea has emerged, and apparently it is the idea behind these railroad amendments, that organizations representing the minority as well as the majority ought to be recognized. In any class or craft therefore, part of the employees might be represented by a national union, if this idea prevailed, part by a company union and still another part by a communist organization . . .

"If the majority of the employees want to have a company union, that ought to be the representative organization, and I do not favor compelling the company to deal also with a national union representing a minority. The same principle applies when the situation is reversed." Hearings on S. 3266, Sen. Comm. on Interstate Commerce, 73rd Cong. 2d Sess., p. 146.

The suggested amendments were not adopted.

When a carrier confers such exclusive recognition on a majority union it is not contributing unlawful support, for it is under a legal duty to recognize such a union. Section 2, Ninth. But when, as requested by the ALEA as is this case before the Examiner and in the revocation proceeding, it confers exclusive recognition on a union which does not represent a majority, the "marked advantage . . . in securing the adherence of employees" thus afforded the union falls within the interdiction of Section 2, Third, Fourth, and Ninth, as it cannot be excused by a showing of a legal duty to recognize. Similarly, the grant of exclusive recognition in these circumstances would constitute an abridgment of the employees' Section 2, Fourth and Ninth, rights and hence violate Section 2, Third, which bars an employer

from interfering with the exercise of the employees' rights
to their choice of representative.^{1/}

Applying these principles to the instant case, it can be readily ascertained that if Allegheny were to assume all or part of the ALEA-Lake Central contract, it would be a violation of the RLA.

If the ALEA is now requesting this Court to require Allegheny to recognize the ALEA as the representative of the portion of this class or craft who were previously employees of Lake Central, then the Court must deny this request, for to do otherwise would be to act in direct contravention of the Railway Labor Act's requirement that there be one representative for an entire class or craft of an airline. Compare, Leedom v. Kyne, 358 U.S. 184, 189 (1958). If a bargaining unit is inappropriate, then the carrier need not and must not bargain with the union seeking such a

^{1/} While some situations (Cf. Pan American World Airways v. IBT, 275 F. Supp. 986, 996 /1967/) involved two unions competing for recognition, the Railway Labor Act draws no distinction between the employer's duty to desist from supporting a union "when his employees are considering whether to unionize or not and when they are deciding to join one union or another." Cf. National Labor Relations Board v. Corning Glass Works, 204 F. 2d 422, 428 (1st. Cir. 1963). Granting exclusive recognition to a minority union is unlawful support whether its opponent is a competing union, or "no union."

1/ unit. In this case the NMB would not certify a representative for less than the entire craft; so the Court cannot require that a carrier bargain with such a unit.

The ALEA-Lake Central contract contains both union security and checkoff provisions. Section 2, Eleventh, of the Railway Labor Act, restricts union security and checkoff arrangements to the majority representative. Thus, the CAB, this court, or an arbitrator could not enforce these clauses without violating the law. To do otherwise would create problems as to whether former Lake Central employees would be terminated if they stopped paying dues and whether new employees hired after the merger would be required to join ALEA.

The major segment of the requested relief is concerned with the establishment and administration of a system board of adjustment under the former ALEA-Lake Central contract (Pet. Br. 17, 22). Section 204 of the Railway Labor Act provides:

"It shall be the duty of every carrier and of its employees, acting through their representatives, selected in accordance with the provisions of this title, to establish a board of adjustment . . ." (Emphasis added.)

1/ An example of this can be found in Foreign Car Center, 129 NLRB 319, 320 (1960). Previous to the case the NLRB had held that it would not certify a one-man unit. When an employer refused to bargain with a one-man unit, the NLRB held that by a parity of reasoning, since the NLRA precludes the NLRB for ordering the employer to bargain with respect to such unit, the employer who is unwilling to bargain cannot be held to have refused to bargain.

Representatives "selected in accordance with the provisions of this title" can only be the representatives selected by the majority of the craft or class, under Section 2, Fourth and Ninth of the Act, for these are the only provisions in the Railway Labor Act for the selection of representatives. Consequently, the granting of this relief to a minority union such as ALEA would be contrary to the RLA.

D. Even If The Requested Relief Could Be Granted,
The Proper Forum For Deciding The Underlying
Question Of Representation Is The National
Mediation Board.

Although almost every page of petitioner brief is concerned with its representative status, ALEA seems to hope that by phrasing its petition in terms of contract and arbitration that the issue of representation, as evident in its own pleadings, will disappear. A case identical to the present case, both legally and factually, is the Brotherhood of Railway and Steamship Clerks BRC v. United Airlines, Inc., 325 F. 2d 576 (6th Cir. 1963). In that case Capital Airlines was merged into United Airlines with Capital ceasing to exist as a company subsequent to the merger while United continued as the surviving carrier. At the time of the merger there were approximately 2,700 employees of Capital within the craft or class represented by the BRC and approximately about 10,000 unrepresented employees in this general craft or class employed by United. The BRC-Capital contract contained a provision that the contract was binding on the successors to Capital. On the basis of this the BRC sought to impose its contract on United. The Hearing Examiner and the Board in approving the merger refused to impose a condition requiring United to accept labor agreements of Capital after the merger.

The BRC brought a suit against United in the United States District Court for the Southern District of Ohio,

seeking a declaration that United was bound by terms of the BRC's collective bargaining agreement with Capital and to enjoin United from refusing to apply that agreement to those former employees of Capital covered thereby who became employees of United upon the consummation of the merger.

On motion of United, the District Court dismissed the BRC complaint on the grounds that although the suit was cast in the form of an action under the law of contracts, it in fact involved a dispute as to who are the representatives under the Railway Labor Act of certain employees of United and that the exclusive jurisdiction of such matters is vested in the National Mediation Board under Section 2, Ninth, of the Railway Labor Act (45 USC § 152, Ninth). In affirming the District Court's dismissal of the suit, the Sixth Circuit stated:

"Three decisions of the Supreme Court make it clear that the Federal courts have no jurisdiction over the solution of representation disputes.
Switchmen's Union of North America v. National Mediation Board, 320 U.S. 297; General Committee, etc. v. Missouri-Kansas-Texas Railroad Co., 320 U.S. 323; General Committee, etc. v. Southern Pacific, 320 U.S. 338.

325 F. 2nd at 578.

The Court of Appeals stated further:

"By skillful pleading in this case, appellant has tried to avoid the consequences of these three Supreme Court decisions above cited, which clearly otherwise would be controlling. Appellant contends that the complaint does not ask for an adjudication of a dispute concerning representation rights, but involves a dispute between the representative of employees and a carrier concerning the latter's contract obligations."

"Even though an action is brought as one sounding in contract the courts have no jurisdiction 'where validity of the contract depends upon the merits of a representation dispute.' Division No. 14, Order of Railroad Telegraphers v. Leighty, 298 F. 2d 17, 20 (4th Cir. 1962)."

325 F. 2d at 579.

In its opinion the Court of Appeals also discussed one of the undesirable effects that would result if they granted the relief sought in the BRC's complaint:

"If the District Court had exercised jurisdiction in this case and had granted the relief sought in the complaint, such a determination clearly could have applied to not more than the 2,700 former Capital employees, constituting a minority of this class or craft of appellee's employees, 530 of whom are now represented by the International Association of Machinists. Such an impracticable result demonstrates the soundness of the holding of the Supreme Court in the three above-cited cases that there is to be no judicial intervention in such representation disputes."

325 F. 2d at 579.

The Court of Appeals in BCR v. United held that this case "involved a representation dispute and not merely an action sounding in contract," and accordingly affirmed the dismissal of the complaint by the District Court. The Court of Appeals did not suggest that the National Mediation Board could determine, under Section 2, Ninth, of the Railway Labor Act, the question of the applicability of the agreement. What it did hold was that the underlying dispute involved questions of representation and that these have been reserved for the NMB. The fact that the pleading was cast in contract terms was not sufficient to create jurisdiction in the court

or to take away the exclusive jurisdiction of the NMB.

The BRC petitioned the United States Supreme Court to review the decision of the Court of Appeals for the Sixth Circuit and was supported in such petition by the Solicitor General of the United States (whose position ALEA adopts in this proceeding). The petition for certiorari was granted by the Supreme Court. 377 U.S. 903. However, after hearing oral arguments, including that by the Solicitor General, the Supreme Court on November 9, 1964, issued a per curiam decision, providing that the "writ of certiorari is dismissed as improvidently granted." Brotherhood of Railway and Steamship Clerks v. United Airlines, Inc., 379 U.S. 26 (1964).

The Court in reaching its conclusion that under the Railway Labor Act the existence of contractual claims is not sufficient to vest the courts with jurisdiction if the basic dispute concerns who is entitled to represent the craft, or who are members of it, relied upon four cases: Switchmen's Union v. NMB, 320 U.S. 297 (1943); General Committee v. M-K-T, 320 U.S. 323 (1943); General Committee v. Southern Pacific, 320 U.S. 338 (1943); Division No. 14, Order of Railway Telegraphers v. Leighty, 298 F. 2d 17 (4th Cir. 1962), cert. den. 369 U.S. 885 (1962).

In the Switchmen's case, the union argued that its bargaining unit of yardmen for a division of the New York Central could not be swallowed up in a unit of all yardmen

because of its contract. It conceded that but for the contract the action of the NMB in finding the system-wide craft or class appropriate might be proper. The Court of Appeals discussed this issue fully. 135 F. 2d 785, 792 (D. C. Cir. 1943). The Supreme Court held there was simply no judicial jurisdiction, despite the contract issue raised.

The two General Committee cases concerned disputes between the Brotherhood of Locomotive Engineers, representing the engineers, and the Brotherhood of Locomotive Firemen and Enginemen, representing the firemen. The disputes arose out of agreements which the firemen had negotiated with the carriers concerning the promotion of firemen to engineer positions, which were inconsistent with the method worked out between the carriers and the engineers. The engineers sued for declarations that the collective bargaining agreements of the firemen were in violation of the Railway Labor Act, the theory being that the agreements interfered with the engineer's rights as exclusive bargaining representative for its craft or class.

Again the Court held that courts were without jurisdiction to consider the action, although plainly here the suits went to the "validity of contract."

The Court of Appeals for the Fourth Circuit, Division No. 14, Order of Railroad Telegraphers v. Leighty, 298 F. 2d 17 (4th Cir. 1962), cert. denied 369 U.S. 885 (1962) also discussed the "validity of contract" theory in connection

with a dispute arising out of the merger of the Virginian Railway and the Norfolk & Western Railroad. There the Interstate Commerce Commission, which has authority to approve railroad mergers, had left to the bargaining representatives the integration of seniority of the affected employees. The telegraphers of each railroad were represented by the Order of Railroad Telegraphers--Division 13 of the ORT representing the Norfolk & Western telegraphers and Division 14. The two divisions were unable to agree on an integration plan, and the national president of the ORT then entered into a collective bargaining agreement with the merged railroad, compromising the positions of each of the divisions. Division 14 then brought suit to enjoin the railroad from acting under this agreement, relying on the union constitution and the provisions of the collective bargaining agreement between Division 14 and the Norfolk & Western relating to seniority rights of men on newly acquired lines. In holding that it lacked jurisdiction to reach the merits of the controversy, the court stated:

". . . (I)n view of the General Committee cases, the conclusion is inescapable that district courts have no such authority where 'validity' of the contract depends upon the merits of a representation dispute." 298 F. 2d at 20.

As a reading of the facts in BRC and the facts in this case will reveal, the cases are identical, and a similar result should follow--the requested conditions should be

dismissed and the question of the representative status of ALEA left to the exclusive jurisdiction of the NMB. The ALEA-Lake Central agreement, like Capital's agreement, contained a clause which provided that in the event of a merger the agreement would be binding upon the successor of Lake Central. The relative size of the groups of employees of Capital and United within the class or craft represented by the BRC in its agreement with Capital is quite similar to the relative size of the groups of employees of Lake Central and Allegheny within the class or craft represented by the ALEA in its agreement with Lake Central. At the time of the merger there were approximately 2,700 employees of Capital within the craft or class represented by BRC and approximately 10,000 in this general craft or class employed by United. Thus, the ratio of United to Capital employees within the craft or class was approximately 4 to 1 in favor of the unrepresented employees. In the instant case, there will be only 448 former Lake Central employees who have authorized^{1/} the ALEA to act as their representative prior to the merger as opposed to 1,605 employees of Allegheny who have not designated the ALEA to act as their representative. The ratio of Allegheny to Lake Central employees within this class or craft is about four to one in favor of unrepresented employees. Thus, ALEA will represent a minority of the employees in the department.

1/ Total unit -- not all authorized ALEA.

Because of the similarity between the two cases, the Hearing Examiner and the Board relied heavily on the BRC case in reaching the conclusion that Allegheny should not, as a condition of the merger, be required to assume the labor agreements of Lake Central or to negotiate new contracts after the merger, and that the question of contracts and negotiations were really questions of representation within the exclusive jurisdiction of the National Mediation Board.

In IBT v. Allegheny, *supra*., the District Court in an action by another Lake Central minority union agreed with the Examiner that the question involved was one of representation over which the NMB had exclusive jurisdiction.^{1/} The ALEA does not disagree that the BRC case is squarely on point, but contends that this court should disregard the decision because the Sixth "erred in so characterizing the controversy" as a representation issue (Pet. Br. 19).^{2/}

That the question of representation is the issue in this case can be seen from the various statements of ALEA. It is also clear from the above cases that the forum for deciding these cases is the NMB. Throughout these proceedings it has always been Allegheny's position that any group of Allegheny employees is free to establish a union status under the

^{1/} See also Turner v. Louisville & Nashville Railroad, ___ F. Supp. ___, 67 LRRM 2617 (W.D. Ky. 1968) (involving a jurisdictional dispute in the railroad industry).

^{2/} ALEA conveniently ignores the Supreme Court's disposition of the BRC case.

procedures established by the RLA, and that Allegheny would recognize and negotiate with any union so certified. Consequently, if ALEA wants to establish itself as the bargaining representative for Allegheny's employees in certain classes and crafts, it is up to it alone to file with the NMB and to go before the employees for their approval or rejection.^{1/} The fact that ALEA has not filed the necessary authorization cards under section 1206.2 of the NMB's Rules and Regulations and has not sought an election in this case is a good indication that it believes the employees at Allegheny do not want this union as their representative, and the reason for filing this petition is to circumvent the prospect of the voters' rejection.

Contrary to the requirements of the Railway Labor Act, ALEA has requested this Court to require Allegheny in the guise of labor protective conditions to recognize it as the representative of the portion of this class or craft who were previously employees of Lake Central. For the Court to enter such an order, it would be acting in direct contravention of the Railway Labor Act requirements that there be one representative for an entire class or craft of an airline and that the representative be the choice of the majority of the employees. Compare Leedom v. Kyne, 358 U.S. 184, 189 (1958).

1/ It should also be emphasized to this court that if a representation dispute is to be submitted to the NMB, it must be submitted by the union or unions concerned inasmuch as the NMB, with Supreme Court approval, has consistently held that the carrier has no right to file a representation petition under the Railway Labor Act. 33 An Rep. NMB 39 (1967).

E. ALEA Has Not Demonstrated A Need For The Requested Condition

On page 47 of his decision (J.A. 190) the Examiner in concluding that the assumption of the Lake Central contracts should not be a condition of the merger stated:

"the Unions have not demonstrated that the failure to require the requested condition will expose Lake Central's employees to any economic injury, nor have they offered any other persuasive reason why the Board, as a matter of policy, should grant the relief requested."

It is clear that the absence of a contract does not leave the former Lake Central employees unprotected.

Pursuant to Section 408(b) of the Federal Aviation Act, the CAB recognized the position of these employees and accorded them and their representatives full participation in the administrative proceedings and, as a result of these proceedings, granted them certain protection as a condition of merger approval. The labor protective provisions imposed by the CAB in the United-Capital merger provide for integration of seniority lists in a fair and equitable manner and arbitration in the event of failure to agree (Section 3); displacement allowance for a period of four years to any employee placed in a worse position with respect to compensation within three years of the merger (Section 4); dismissal allowance based on length of service to any employee deprived of employment as a result of the merger (Section 5); protection "of benefits attaching to his previous employment, such as hospitalization, relief, and the like" (Section 6);

moving, traveling and living expenses for employees and families required to change their residence as a result of the merger (Section 8); protection against loss in sale of home or unexpired lease as a result of change of place of residence because of the merger (Section 9); forty-five day notice to employees to be affected by proposed changes resulting from the merger (Section 11); arbitration of any dispute under the protection provisions (other than Section 9 which provides separate appraisal machinery for resolving valuation disputes) (Section 13).^{1/} These provisions are applicable to all employees, whether organized or unorganized.

In addition to the protection afforded by the labor protective provisions, the former Lake Central employees have gained and will continue to benefit from the refusal of Allegheny to accept the ALEA-Lake Central agreement. As a result of the refusal and the application of the conditions of employment prevailing at Allegheny, the employees have received higher wages, fully paid hospitalization coverage for themselves and their families, increased vacation and sick leave benefits, better overtime pay for work performed on holidays, and better shift pay differential. In view of the benefits they have received, it is unlikely that any former Lake Central employees would view it as a victory if

1/ Section 13 grants a right to place before an arbitration committee only those issues arising out of other labor protective conditions. It does not grant a general right to take any and all issues involving a carrier or an employee to arbitration. It certainly does not impose a duty on the carrier to arbitrate the issue of survivability of the contract where the CAB has not imposed this as a condition of the merger.

it were held that the ALEA contract was binding on Allegheny. This conclusion is supported by the fact that even though the former Lake Central employees have worked for six months without a contract and under the employment conditions existing at Allegheny, ALEA's brief does not mention any grievance from these employees seeking restoration of the old contract. Instead, the only apparent grievance that ALEA can find to complain about is its loss of representative status. There is also no point in arbitrating what, if any, provision of the contract is applicable when neither the petitioner nor any employee has requested that any provision relating to wages or conditions of employment be made applicable to any employees. Accordingly, no disadvantage to employees will result from the carrier's failure to bargain with ALEA until, if ever, it achieves a majority status.

The worst that can befall the ALEA by Allegheny's refusal to assume the Lake Central contract or to recognize a minority union, such as it, as exclusive representative is such recognition will be delayed until its status is established by NMB procedures. Such a delay entails no particular hardship on ALEA unless it believes that it cannot command majority support in a free election. In these circumstances ALEA should file the necessary authorization cards and then put the resolution of its status to a fair test.

There is further reason for rejecting ALEA's request for additional conditions. Throughout its brief ALEA isolates the labor protective conditions from a host of other economic and legal issues which were involved in the Allegheny-Lake Central merger proceeding. On page 3 of its brief, it states: "the CAB proceeding was mainly concerned with the terms of the merger and its potential effect on air commerce. A recitation of those portions of the record would serve no useful purpose, since the present petition raises only questions relating to the impact of the merger on the employees of Lake Central." Inasmuch as the Act does not provide for separate consideration of the employees involved, but instead places consideration of this factor alongside a myriad of other factors constituting the public interest, it is the height of legal conceptualism to say that this court can evaluate ALEA's present request without considering its impact on non-labor factors that were considered in the decision. Even where the employees are concerned, ALEA's isolation of the requested condition raises serious problems. For example, could there be a merged seniority list as required by Section 3 of the Labor Protective Conditions if the employees continued to work under the terms of separate contracts, or could Allegheny have raised the level of wages and employee benefits for the former Lake Central Employees to that employees of Allegheny enjoyed if it were forced to assume all or part of the Lake Central

contract? Without consideration of these factors, the court has no basis for granting the requested conditions.

F. The Decision In Wiley v. Livingston Is Not Applicable To The Facts Of This Case.

The Argument of the petitioner is that the Supreme Court's decision in Wiley v. Livingston, 376 U.S. 543 (1964), is determinative of this case. Briefly stated, Wiley held that the "disappearance by merger of a corporate employer which has entered into a collective bargaining agreement with a union does not automatically terminate all rights of the employees covered by the agreement, and that, in appropriate circumstances present here, the successor employer may be required to arbitrate with the union under the agreement." 376 U.S. at 548.

However, the Court added: "We do not hold that in every case in which the ownership or corporate structure of an enterprise is changed the duty to arbitrate survives." 376 U.S. at 551.

While there are similarities between Wiley and the present cases (or any situation involving a merger), there are significant differences which lead to the conclusion that the "impressive policy considerations favoring arbitration" in Wiley are not present here. In fact, the differences between the two cases not only establish that Wiley is

distinguishable but that the different result reached in this case is clearly correct.

First, Wiley was a suit to enforce arbitration under Section 301 of the Labor Management Relations Act. The action here arises in the airline industry where the Railway Labor Act, and not Section 301, is applicable. There is no equivalent provision in the Railway Labor Act. International Association of Machinists v. Eastern Airlines, 320 F. 2d 451, 455 (5th Cir. 1963); Bruno v. Northeast Airlines, 229 F. Supp. 716 (D.C. Mass., 1964). Hence, ALEA's position that Wiley settles the question in this case (Pet. Br. 12-22) is not warranted. Examination of the authorities compels precisely the contrary inference.

Wiley relied on Retail Clerks v. Lion Dry Goods, 369 U.S. 17 (1962), in support of the holding that a minority union could bring a Section 301 action under the Labor Management Relations Act. In Lion Dry Goods the Court concluded that the phrase "labor organization representing employees" in Section 301 (a) of the LMRA did not mean exclusive bargaining representative. "Had Congress thought that there was any merit in limiting federal jurisdiction to suits on contracts with exclusive bargaining agents, we might have expected Congress explicitly so to provide, for example, by enacting that §301(a) should be read with §9(a)." 369 U.S. at 29. Section 9(a) of the NLRA provides for the selection of exclusive bargaining representatives by the

majority of employees in an appropriate unit, and is the analogue of Section 2, Ninth, of the Railway Labor Act. Cf. N.L.R.B. v. Jones & Laughlin, 301 U.S. 1, 44 (1937).

The Court also added in Lion Dry Goods, in support of its conclusion that minority unions could proceed under Section 301(a) of the LMRA, that Section 8(f), added by the 1959 amendments to the Act, "contemplates contracting with unions that would not represent a majority." 369 U.S. at 29.

But Section 204 of the Railway Labor Act--under which the Petitioner implies federal jurisdiction would exist in this case and under which it suggests Allegheny should be required to arbitrate with ALEA (Pet. Br. 17)--has been limited by Congress in precisely the manner which the Court said in Lion Dry Goods, would indicate a Congressional intent to exclude minority unions from the purview of federal jurisdiction.

Section 204, as previously noted, applies to adjustment boards established with the majority representative. When ALEA lost its majority status on the consummation of the merger, it lost its status as representative under the RLA

and could not enter into or maintain a system board.^{1/} As a consequence of this development, there is no federal jurisdiction based on Section 204 for granting the relief requested. Petitioner cites no case to the contrary. The only case mentioned by the ALEA (Pet. Br. 17), IAM v. Central Airlines, 372 U.S. 682 (1963), did not reach the point raised here since the machinists were the certified bargaining agent for the class. On the basis of there being no statutory provision for this type of relief, Wiley is clearly distinguishable.

In addition to the difference between Section 301 of the LMRA and Section 204 of the RLA, there are other differences in the statutes which would require a difference in results. First, the LMRA grants the NLRB broad powers in fashioning an appropriate unit for bargaining. The NLRB will recognize a unit as appropriate on the basis of bargaining history even though it would not find a unit appropriate

^{1/} It could possibly be argued that if the dispute involved railroads, rather than airlines, that another forum exists for handling of this dispute, i.e., the National Railroad Adjustment Board (NRAB). While there is considerable doubt that NRAB could pass on a contract where there is an underlying representation question, this need not be considered by the court inasmuch as NRAB has no jurisdiction over the airlines. Although a comparable national board of adjustment is authorized under Title II of the RLA for airlines, it has not been established. IAM v. Central Airlines, 372 U.S. 682, 685-686 (1963).

in the absence of such history. Cf. Murry Co. of Texas, 107 NLRB 1511. Accordingly, in the circumstances of a merger, it would be possible to have two units of employees, where one unit would normally be appropriate, if both groups maintain their separate identity. As noted above, this is not the situation under the RLA. Under that Act, there can be but one system-wide unit covering all the employees in the same class. Thus, the decision in Wiley would perfectly fit into the historical bargaining unit concept of the NLRB, but not the system-wide class or craft concept of NMB.

Another possible distinction lies in the fact that under LMRA, Section 9(c)(1)(B) an employer might file a representation petition in which all the employees in the merged unit vote on whether to have representation for the entire unit or no representation. It is possible, although not discussed in Wiley, that such an election might terminate any contractual rights existing. The same result also might be reached by the employer filing with the NLRB a request for clarification to ascertain whether an existing unit is appropriate after a merger. If this analysis proves correct, then an employer's administrative problems under Wiley might be short-lived. However, this would not be true under RLA, inasmuch as the NMB, with Supreme Court approval, has consistently held that the carrier has no right to participate in representation procedures. 33 An. Rep. NMB 39 (1967).

Even if Section 204 could be utilized by a union that did not represent a majority of the employees, it does not follow that the result in Wiley should be the result in an airline merger. The policy behind Wiley was to provide protection to employees during the sudden change resulting from the merger. (Pet. Br. 13) The reason why such a policy is not needed in the instant case is spelled out by the Examiner on pages 46-47 of the Decision (J.A. 189-190) as follows:

"Since the labor protective provisions of the United-Capital Merger Case are to be adopted here, and since they are wholly devoted to affording protection to the employees from a change in the employment relationship, the purpose of the Wiley case is served without the imposition of the condition sought by ALDA and the other unions. The air carriers involved in this case, unlike the publishing firms in the Wiley case, are subject to economic regulation by an administrative agency which has a long history of cushioning the effects of mergers on employees with appropriate safeguards."

Accordingly, the policy of protecting the employees' interest which underlies Wiley has been fully satisfied here. The merger was subject to the prior federal regulation by the Civil Aeronautics Board, not on the "prerogatives of the owners" acting "independently"; the regulative agency did protect the employees from the impact of sudden change in the employment relationship by subjecting the carrier to certain conditions set forth supra; and the employees participated fully in the imposition of the conditions leading to the merger. Thus, there is no reason to impose the

ALEA agreement on Allegheny or the former Lake Central employees.

In fact, since the Lake Central employees are receiving higher pay and improved employee benefits, the imposition of the contract would be to their detriment.

It should be noted that the integration of personnel contemplated by Allegheny has been effectuated. At the eight common operation points, the Lake Central employees have been absorbed by Allegheny and integrated functionally into the system with other employees, resulting in a complete loss of separate identity of the Lake Central employees at these points. In addition, there has been interchange among the former Lake Central and Allegheny employees at other points in the system. In Wiley, the court stated:

"There may be cases in which the lack of any substantial continuity of identity in the business enterprise before and after a change would make the duty to arbitrate something imposed from without, not reasonably to be found in the particular bargaining agreement and the acts of the parties involved." 376 U.S. at 551.

Because there has been a complete loss of identity of the Lake Central employees at the common points, there is not the "continuity of identity" found necessary in Wiley and a different result must follow. In McGuire v. Humble Oil & Refining Co., 355 F.2d 352(2nd Cir. 1966), the Second Circuit refused to order the surviving company to assume the obligations of an arbitration clause of the merged company where the employees had been thoroughly integrated. The result which ALEA would impose would be impractical, since

it would place former Lake Central employees working side by side with and performing the same duties as present Allegheny employees with lesser rates of pay, and subject to different rules and working conditions. Integration of personnel would be hindered if employees in the same classification and work location were to be subject to different contracts or different rules, pay or working conditions.

Another difference between this case and Wiley is that ALEA has abandoned its right to arbitrate. The Supreme Court in Wiley, while compelling arbitration of specific issues, stated, "...We/ do not rule out the possibility that a union might abandon its right to arbitrate by failing to make its claim known." In the proceeding before the CAB, ALEA did not request enforcement of the arbitration clause, let alone arbitration of a specific grievance. There exists no grievance which arose prior to the merger involving the ALEA-Lake Central contract. Also, because the former Lake Central employees are receiving higher wages and fringe benefits at Allegheny, it is unlikely that any grievance will be filed seeking to return to lesser rates of pay and lower fringe benefits. The Petitioner concedes as much on page 15 of its brief.

Of course, the main reason why Wiley is not applicable to airline mergers is the BRCA v. United Air Lines case, discussed supra. The Supreme Court handed down its decision

in Wiley on March 30, 1964, while BRCA was pending in the Supreme Court. The union and the Solicitor General of the United States briefed and argued that Wiley was applicable to an airline merger. (The ALEA has adopted the arguments of the Solicitor General in that case.) The Supreme Court, on November 9, 1964, dismissed its Writ of Certiorari as being improvidently granted. 379 U.S. 26 (1964). Therefore, as to mergers subject to the approval of the CAB, BRCA rather than Wiley remains the law.

G. ALEA Has Failed To Demonstrate That The CAB Abused Its Discretion In Refusing To Order Allegheny To Assume The Contract

Section 408 of the FAA empowers the CAB to approve a merger "not inconsistent with the public interest" upon such terms as it finds to be "just and reasonable." The Board, as part of its deliberations, will consider the interests of the employees involved. Within the perimeter of the fair and reasonable requirement, the Board has complete discretion as to the conditions, if any, to be imposed in a merger for the protection of the employees. The question thus presented to this court is whether the CAB has abused its discretion by refusing to impose upon Allegheny now sought by ALEA.

In the instant case the CAB Examiner and the Board approved the merger, imposed certain labor protective conditions on the carrier, and rejected the two conditions on the carrier, and rejected the two conditions now being sought by ALEA. This result was reached only after an open hearing in which all parties, including the ALEA, were allowed to fully present their arguments and to discuss their proposals; and after the Examiner had analyzed the record, made findings based on his analyses and fashioned the conditions which he believed fair and reasonable. The conditions that were imposed had been developed over a period of years and had been applied in other mergers.

The proposed conditions imposing the defunct contract on the surviving carrier and changing the burden of proof had been uniformly rejected in other proceedings and were rejected in this proceeding. In rejecting the request for the assumption of the contract, the Examiner not only relied on past precedent, but found it inappropriate after carefully evaluating the request in the context of all the labor conditions and non-labor factors constituting the framework of this merger. The Examiner's findings and conclusions were adopted by the Board.

The Board, far from acting in an arbitrary and capricious manner in regard to the assumption of the contract and change in the burden of proof, has through the Labor Protective Conditions that were granted fully protected the employees. It was within the competence and discretion of the Board to reject the added conditions, and by so doing, it did not abuse its discretion.

III. THE CIVIL AERONAUTICS BOARD DID NOT ABUSE ITS DISCRETION BY REFUSING TO ORDER ALLEGHENY TO ASSUME THE BURDEN OF PROOF IN A DISPUTE OVER WHETHER A CHANGE IN EMPLOYMENT STATUS IS DUE TO THE MERGER

ALDA and IBT, but not ALEA, in the initial hearing before the Examiner requested that Section 1^{1/} be amended

1/ Section 1. The fundamental scope and purpose of the conditions specified in paragraph 2(c) of this order are to provide for compensatory allowances to employees who may be affected by the proposed merger of United and Capital approved by this order, and it is the intent that such conditions are to be restricted to those changes in employment solely due to and resulting from such merger. Fluctuations, rises and falls, and changes in volume or character of employment brought about solely by other causes are not covered by or intended to be covered by this order. (Labor Protective Conditions)

so as to expressly provide that in a dispute between an employee or his representative with the carrier over whether a change in employment status is solely due to and resulting from the merger, the burden of proving the negative shall rest with the carrier.

The request that ALDA and the IBT made was not novel. In several merger cases, unions have requested this same change, and in each instance, the request has been rejected. United-Capital Merger, 33 CAB 307; Western-Pacific Northern Merger, Order E-25240 (1967); Frontier-Central Merger, Order E-25626 (1967); and Alaska-Cordova Merger, Order E-26086 (1967). In their request for such a change in this case, ALDA and IBT presented nothing that had not been previously considered and rejected in prior merger cases.

ALEA, as part of its present petition, also requests that the carrier assume the burden of proving that a discharge was not due to the merger. Because this is the first time that ALEA has raised this point and because it was not raised in an appeal to the CAB, ALEA's present request is untimely, Argument I, supra.

On page 25 of its brief, ALEA states that "it can easily be demonstrated that the CAB's rule is plainly unreasonable and contrary to accepted legal principles." Nothing could be further from the truth. The burden of proof is ordinarily in the first instance with the party who initiates an action or proceeding. Thus an employee

who claims under Section 1 of the Labor Protective Conditions that he has been displaced because of the merger or that the carrier failed to give notice of a change arising out of the merger under Section 11 has the duty to prove this.

ALEA seeks to overcome the normal rule by claiming that the carrier has exclusive knowledge of the events behind a displacement thereby bringing it within an exception to the rule which would require the party having the knowledge of facts to assume the burden of proof. First, ALEA misstates that the real exception is that the burden of explanation or the burden of going forward with the evidence, as opposed to the burden of proof, is sometimes placed on a party-opponent who has knowledge of those facts entirely within his possession. 29 Amer. Jur. 2d Sec. 131. Here, even if we were to assume that the whole issue rested on the carrier's knowledge of the facts, it still would not transfer the burden of proof from the employee to the carrier. Secondly, even the burden of explanation is not applicable to a negative proposition.

The practical effect of ALEA's request would be to require the carrier to prove that an employee was not displaced because of the merger, rather than proving the employee was displaced because of a reason other than the merger. Here the CAB balanced the normal rule in favor of placing the burden on the employee of establishing his claim against the proposition that the carrier should establish the negative and found the former to be more equitable.

The assignment of the burden of proof in this regard is properly within the expertise of the CAB and should not be rejected by this Court.

In an attempt to demonstrate the unreasonableness of the CAB position, ALEA seeks to establish that the rules concerning the burden of proof applicable to an unfair labor practice discharge under the LMRA should be the same as those governing a displacement under Labor Protective Conditions (Pet. Br. 26). In view of ALEA's concession that the legal considerations under the LMRA and the Labor Protective Conditions are not the same it is difficult to follow ALEA's argument that the rules should be the same. As LMRA unfair labor practices proceedings are quasi-criminal in nature and as arbitration under the Labor Protective Conditions is similar to a civil action, the burden of proof would be expected to be different. In other words, there exists no policy reason for shifting the burden from the employee to the carrier. It is also worth noting that the burden of proof under the LMRA is not what ALEA claims it to be; In Labor Board v. Great Dane Trailers (Pet. Br. 26) the Supreme Court held that burden of explanation was on the employer only after it had been shown that the employer had engaged in discrimination.

In any event, ALEA has failed to demonstrate that the CAB abused its discretion by refusing to impose the burden of proof upon Allegheny. See Argument II G supra.

CONCLUSION

By reason of the foregoing, the Petition for Review
should be dismissed in its entirety.

Respectfully submitted,

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January 21, 1969

CERTIFICATE OF SERVICE

I hereby certify that I have today served the Brief of Intervenor Allegheny Airlines, Inc., in answer to the Brief of Air Line Employees Association, International, in the above-entitled cause, upon all parties to the case by causing copies thereof to be mailed, properly addressed, with first-class postage prepaid, to counsel for each such party as follows:

Warren L. Sharfman, Esq.
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Edwin I. Colodny

January 21, 1969

APPENDIX A

AFFIDAVIT OF E. C. TAYLOR

CITY OF WASHINGTON

CITY OF ALEXANDRIA

ss:

E. C. Taylor, being first duly sworn on his oath, deposes and says:

1. That I am Senior Vice President - Operations for Allegheny Airlines, Inc., and fully acquainted with facts surrounding the merger of Lake Central Airlines, Inc. (Lake Central), into Allegheny Airlines, Inc. (Allegheny), and the events since that date particularly those surrounding the integration of the station agents, reservation clerks and secretary and clerks of both airlines.
2. That at the time of the merger, Allegheny had 46 stations and Lake Central had 39 stations. Of these stations, eight were common stations at which both Allegheny and Lake Central employees were working. Since the merger, there has been the addition of one station and closing of two, leaving a total 74 stations. There were no changes in common stations.

3. That at the time of the merger there was a total employee complement in the class and craft consisting of station agents, reservation agents, secretary and clerks, as follows:

Allegheny

Station Agents	893
Reservation Agents (including 15 communications operators)	308
Secretary and Clerks	<u>225</u>
Total	1,426

Lake Central

Station Agents*	393
Reservation Clerks*	74
Secretary and Clerks	61
Communications Operators	<u>6</u>
Total	534

* These employees were called Fleet and Passenger Service Employees.

4. That at the time of the merger, Allegheny employees in the above class were unrepresented. At Lake Central, ALEA represented only the reservation and station agents (467 employees).

5. That since the merger, there have occurred the following changes in the employee complement:

	Total Allegheny and Lake Central Employees <u>July 1, 1968.</u>	Total Allegheny Employees (Including Former Lake Central Employees) <u>January 1, 1969</u>
Station Agents	1,286	1,363
Reservation Clerks (Including Communications Operators)	382	425
Secretary and Clerks	<u>286</u>	<u>265</u>
Total	1,954	2,053

6. That of the Lake Central employees who were formerly represented by ALEA, 448 remain (380 Station Agents and 68 Reservation Clerks).

7. That there are 292 employees working at common stations. Of these, 137 were Allegheny employees prior to the merger, 62 are Lake Central employees, and 55 are employees hired subsequent to the merger.

8. That at the eight points on the combined system, the former Lake Central employees were integrated in to a combined work force with the Allegheny employees. To date there has been no grievances filed from either the former Lake Central or Allegheny employees.

9. That since the merger the following transfers have occurred:

Lake Central employees to Allegheny stations	4
Allegheny employees to former Lake Central stations	5
Allegheny employees to common stations	2
Lake Central employees to common stations	6
Employees at common stations to other common stations	8
Employees at common stations to Allegheny stations	4
Employees at common stations to Lake Central stations	<u>5</u>
Total Transfers	34

10. That a majority of these moves were at the request of the employee, and he or she bore the expense of relocating. To set aside, interrupt or re-establish the work forces as they were constituted prior to the merger would impose not only monetary penalties, but personal hardships on employees who have relocated and who would, perhaps, be faced with taking children out of school or making numerous other adjustments in their personal schedules and environment.

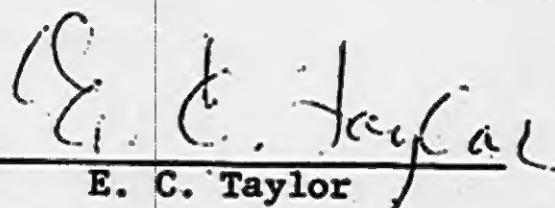
11. That immediately following the merger, on July 1, 1968, and July 8, 1968, the reservation agents and station agents received pay increases ranging between \$31 and \$140 per month. The secretary and clerks who remained with the carrier have received increases in pay since the merger ranging generally between \$5 and \$30 per month.

12. That in addition to wages, the former Lake Central employees received numerous other improvements in their benefits, such as, fully paid hospitalization coverage for themselves and their families, increased vacation and sick leave benefits, better overtime pay for work performed on holidays, and better shift pay differential.

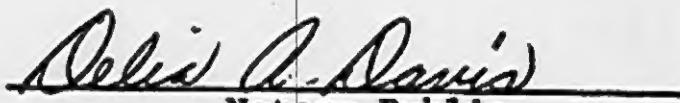
13. That no former Lake Central employee has requested that they be returned to the wages and working conditions under the ALEA-Lake Central contract.

14. That the aforementioned statements are true to the best information and belief of affiant.

And further affiant saith not.


E. C. Taylor

Signed and sworn to before me, a Notary Public, this
16th day of January 1969.


Delia A. Davis
Notary Public
My commission expires February 11, 1969